

INVESTIGATION REPORT

TO: Donald L. Crain, Esq.
Frost Brown Todd LLC
Law Director, West Chester Township

FROM: Douglas E. Duckett, Esq. Douglas E.
Duckett Law Firm, LLC Duckett

SUBJECT: Investigation of Issues in West Chester Police Department

DATE: June 30, 2020

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I. SCOPE OF ENGAGEMENT AND FACTUAL BACKGROUND.

A. My Role in the Investigation.

I am an attorney in Cincinnati and the owner and principal of Duckett Law Firm, LLC. My firm offers legal representation and training services for employment and labor relations issues for public- and private-sector employers in Ohio and throughout the United States, including conducting internal investigations when needed. Through your role as Township Law Director, Frost Brown Todd retained my firm to investigate issues that have arisen in the West Chester Police Department involving relations among the command staff, the conduct of the two police captains, and allegations of retaliation that the captains have raised individually and through their attorney against the Police Chief and the Assistant Chief. As Law Director, you will be responsible for advising the Board of Trustees on what action, if any, should be taken, as well as representing the Township in any subsequent hearings or legal proceedings, including defending against possible lawsuits claiming retaliation for protected conduct. My investigation and this report are thus intended to assist you in advising Township officials on the legal and human resources issues presented in this matter and what steps to take regarding the conclusions contained in the report.

B. The Key Employees.

Five senior commanders of the West Chester Police Department make up what is known as the Command Staff, though sometimes meetings of this group are expanded to include lieutenants and occasionally one or more of the crime analysts. There are also support staff who work with them, but these five people are the key leaders of the organization.

1. Chief Joel M. Herzog.

Col. Joel Herzog was appointed as Chief of the West Chester Police Department in December 2015. He has served in the department for most of his adult life; he was first appointed as a patrol officer in February 1991. From there, he worked his way through the ranks, working in the canine unit starting in 1993, promoted to sergeant in 1995, and he was promoted to lieutenant, assigned to the

Chief's office, in 1999. Under a new chief, he was promoted to captain in 2001. After a drawn-out selection process, he was appointed as Police Chief without ever serving as an Assistant Chief, and he has continued in that role since.

2. Assistant Chief Brian L. Rebholz.

Lt. Col. Brian Rebholz was appointed as Assistant Chief in December 2016, during Col. Herzog's tenure as Police Chief. He became a patrol officer after leaving the United States Air Force in 1992. After a short stint as a sergeant, he was promoted to lieutenant in 2007 and then to captain in 2009, where he served until his promotion as Assistant Chief.

3. Captain Jamie L. Hensley.

Capt. Jamie Hensley first came to the West Chester Police Department as a patrol officer in 1999 after service in the military and a brief stint at the Butler County Sheriff's Office. He served in several roles, including as a canine and SWAT officer, as well as a detective. He was promoted to sergeant in 2006, at first working in patrol but then for six and a half years he served in the Integrity and Development (I&D) section, which conducts internal affairs investigations and also oversees training in the department. He was promoted to lieutenant in late November 2015, moving back to uniformed patrol, and he then was selected for promotion to Captain by Chief Herzog¹ just over a year later in December 2016. On Wednesday, June 25, 2020, Capt. Hensley resigned and retired without notice, but this report was largely prepared given the state of the allegations and facts as I had determined them prior to his resignation.²

4. Captain Joseph S. Gutman.

Capt. Joe Gutman began his service as a patrol officer for West Chester Township in 1995. He also has served in several roles within the Police Department, including working as a canine and SWAT officer and as a defensive tactics instructor. He was promoted to sergeant in 2005, working in road patrol, canine, and as a SWAT supervisor. He was promoted to lieutenant in June 2010, and as lieutenant, he oversaw a squad on road patrol as well as serving for a time as SWAT commander and head of Criminal Investigations. He was promoted as captain in late September 2016, shortly before Capt. Hensley, again on the recommendation of Chief Herzog.

The two captains oversee two of the three "bureaus" within the Police Department, specifically the Patrol Bureau and the Support Bureau, and those responsibilities are rotated from time to time. These four career officers know each other well, for the Chief, Assistant Chief, and the two captains have worked together for almost their entire careers with West Chester Township.

5. Administrative Bureau Chief Courtney R. Lovell.

¹ The West Chester Township Board of Trustees is sole appointing authority for all Township employees, including for promotions, but of course often acts on the recommendations of department heads such as the Police Chief.

² Before Capt. Hensley's resignation, I had verbally briefed the Board of Trustees and the attorney for the two captains, Elizabeth S. Tuck, Esq., on my conclusions in the investigation. Accordingly, both the Township leadership and the captains were aware of my broad conclusions prior to Capt. Hensley's resignation and retirement.

Courtney Lovell has served as Administrative Bureau Commander, heading the third bureau in the Police Department, since her promotion in late 2017. Before that, she served as the [REDACTED] to the Police Chief, which she began in October 2010 under then-Chief Eric Niehaus. Ms. Lovell directly supervises the Chief's [REDACTED] the [REDACTED] for accounting, as well as overseeing the Records Section, which has its own supervisor Jeanni Quinn. All employees whom Ms. Lovell supervises are civilians and outside of the bargaining unit, as is she, but she is considered part of the core command staff as head of civilian support operations.

6. [REDACTED] Justine M. Bickley.

When Ms. Lovell was promoted, the Chief needed a new [REDACTED] to replace her, and after a selection process, he recommended, and the Board of Trustees appointed Justine Bickley³ to this position in March 2018. This was Ms. Bickley's first position with West Chester Township; immediately prior to this job, she was not in the workforce, but she had previously taught business classes for sixth through eighth grades in [REDACTED] and had also worked at both a law office and at [REDACTED] Bank. She has a master's degree in education. While not part of the command team per se, she works in the Chief's office in proximity to all of them, and some of the initial issues that gave rise to the controversies in question swirled around her appointment and early service—unbeknownst to her at the time and, as I find, through no fault of her own.

C. The Sequence of Events.

Justine Bickley was not in any way the subject of this investigation, but the key events in question started not long after she was hired as the Chief's [REDACTED]. On Tuesday, May 15, 2015, the West Chester Police Department and the community held an evening observance for Peace Officers Memorial Day, an annual remembrance of law enforcement officers who have died or been disabled in the line of duty. Ms. Bickley helped work the event, and it was widely attended by department officers and their family members. At that event, Capt. Joe Gutman and his wife [REDACTED] saw Ms. Bickley and acknowledged her, and he reported that she winked at him in return. Both Capt. Gutman and his wife took exception to this, seeing it as flirtatious, and [REDACTED] spoke to Ms. Bickley's supervisor Courtney Lovell, with whom she had been friendly socially, saying that she was not happy about the incident. Ms. Lovell and Ms. Gutman later exchanged text messages, and Ms. Lovell told her that others had mentioned the winking and that the command staff would discuss the issue and later talk with Ms. Bickley.

When Ms. Lovell raised the issue with Chief Herzog, however, he recognized a potential human resources and even discriminatory harassment issue, and he prepared a memorandum dated May

³ Justine Bickley is a pseudonym. [REDACTED]

[REDACTED], I have used a pseudonym in this report, and the public records that have been released have been redacted to shield her name for her safety.

21, 2018, to the Township's then-Human Resources Manager Joan Tumblison⁴ documenting what he had learned. In that memorandum, the Chief described the winking issue, stated that he had seen Ms. Bickley wink at others and that he thought that she was not conscious of doing so, but Capt. Gutman disagreed, saying that "she knows she does so" and that "an unmarried woman should never wink at a married man" because of the possible perception of something flirtatious. In that meeting, Capt. Jamie Hensley spoke up as well, saying that some of Ms. Bickley's behavior made him uncomfortable coming to work, including the fact that Ms. Bickley wore one skirt in particular that they both saw as too short, and that both captains disapproved of her wearing high heels in an office environment. Both captains were also uncomfortable with Ms. Bickley staying at work past the normal quitting time of 4:30 p.m. Neither Chief Herzog nor Courtney Lovell, her two supervisors, had ever seen Ms. Bickley dress inappropriately or in any way that violated the Township's employee dress code. Of note, the Township dress code explicitly provides that women can wear "dress heels" in the office, a fact that neither captain seemed to know.

The Chief also referred in the memorandum to a trip that he and Capt. Hensley had taken to Columbus, where Capt. Hensley referred to unspecified issues in Ms. Bickley's background that he could not confirm and would not elaborate on. He also related three incidents that had occurred that caused him to be uncomfortable. The first was just after the end of the business day when he had changed out of his uniform and was leaving when Ms. Bickley asked him about how a Township Incident Report would rank in a new priority system that the Chief was developing with her; Capt. Hensley thought that this could have waited until the next day, and he was concerned that "she had other motives to talk with him." The second incident involved her offer on a day when he was busy to pick him up lunch while she was out, an offer that made him "uncomfortable." The third incident involved her bringing him a paper in the hallway outside his door after he had again changed out of uniform to head home.

On May 24, 2018, Capt. Gutman sent Chief Herzog and Ms. Tumblison a memorandum elaborating his concerns in response to the Chief's earlier memo to Ms. Tumblison. Capt. Gutman clarified that he does not know why Ms. Bickley was winking at him but that he was concerned about perceptions. He also disputed the Chief's reference to a Facebook post that [REDACTED] had made of a woman with her shirt unbuttoned more than halfway down her chest winking in a very lascivious manner, calling the post "ambiguous." Capt. Gutman also noted the issue of Ms. Bickley staying late at the office, saying "I would not want to make it a habit of walking out late in the day with an employee of the opposite sex, well after hours," and that "it would be a best practice that Ms. Bickley leave at here [*sic*] assigned time." The Chief later prepared an addendum noting that both Capt. Hensley and Capt. Gutman wanted the issue to be handled in an informal manner rather than as a formal complaint to Human Resources. In the midst of this, on the advice of Ms. Tumblison, who is also an attorney, the department's discriminatory harassment policy was modified to eliminate the requirement that the Township provide a detailed notification to complainants on what action was taken in response to a complaint. Both captains would later cite this timing as evidence of the Chief's desire to "protect" Ms. Bickley. Ms. Tumblison said that in her discussions with the Chief and Ms. Lovell about these issues, she thought that the captains' complaints were "ridiculous in that there were nothing in their complaint that we thought we could

⁴ At the time I interviewed her, Ms. Tumblison no longer worked for West Chester Township, and she had later married and taken the name Joan M. Germann. Ms. Germann left West Chester Township in August 2019.

move on. Then it looked like the wives were driving it.” On that basis, no action was taken, and the Chief issued a brief notice to both captains that the issue had been reviewed and resolved.

According to the captains, both Chief Herzog and Assistant Chief Rebholz thereafter began to treat them in a very different way, which they would complain in 2020 was retaliatory because they had objected to Ms. Bickley’s “misconduct.”⁵ Meanwhile, both the Chief and the Assistant Chief grew increasingly frustrated by how they saw the two captains treating Ms. Bickley—essentially freezing her out and largely refusing to engage with her at all other than the barest minimum of unavoidable, business conversations. Ms. Bickley, while having no idea why this was happening, certainly perceived the “cold shoulder”; she saw that “they didn’t like her” and she was hurt by that. Chief Herzog and Assistant Chief Rebholz also perceived that both captains were withdrawing from normal office interactions overall—no longer joining the Chief as frequently for Friday lunches, eating lunch alone in their offices with the door closed rather than joining Lt. Col. Rebholz in the break area, and avoiding the once-frequent discussions in the “T” hallway intersection right outside Capt. Gutman’s office, which is directly across from Ms. Bickley’s work area and just around the corner from Chief Herzog’s office. The command staff and Ms. Bickley all work in close proximity, so the colder and more withdrawn atmosphere would be very evident to all. While these kinds of interactions are not the kind of core responsibilities that would be listed on a position description, they are essential to communication and understanding, and the sharp change in climate contributed to a growing sense of dysfunction and alienation among the command staff. In turn, Capt. Hensley and Capt. Gutman complain that the Chief no longer talked to them in the way he used to, and they feel left out of discussions and meetings of which they were once an integral part. This dynamic presents a sort of “chicken or the egg” dilemma—the distance and withdrawal is seen by all, but the two sides dispute how it began or what caused it.

Chief Herzog and Lt. Col. Rebholz prepared Capt. Hensley’s 2018-19 evaluation in April 2019, and Lt. Col. Rebholz prepared Capt. Gutman’s at roughly the same time. Both were presented to the captains in June 2019, and both captains were upset at ratings in several areas that were less than optimal. The evaluations rate several dimensions on a scale of 1 (needs improvement) to 5 (exceptional). A rating of 3 means “meets expectations” and is, thus, a positive rating.⁶ Capt. Hensley’s rating averaged 3.92 on that 5-point scale, but his ratings in the categories of Conflict Management and Collaborative Leadership/Team Building were 2 (Below Expectations). For Capt.

⁵ I will address this at greater length below, but it bears stating now that I conclude that, in fact, Ms. Bickley did not violate any Township policy, that she did nothing wrong at all, and that the captains’ subjective discomfort around her, while perhaps genuine, would not be seen as reasonable by “a reasonable person” in their position, the objective standard that must govern any such claims under federal and state employment discrimination and harassment law. In fact, I find their objections to Ms. Bickley’s innocuous conduct and attempts to be helpful and friendly in the office as rife with unwarranted and even sexist assumptions, expectations, and innuendo.

⁶ In my thirty years of human resources management in local government, I found that “grade inflation” has made its way from education into the workplace, and employees too often expect to receive “exceptional” ratings while seeing a rating of “meets expectations” as disappointing, which fundamentally misconstrues (and distorts) the process of measuring and documenting employee performance. One should expect that most employees will fall in the “meets expectations” category, and those who do are not showing any performance problems. Any honest model showing the distribution of employee performance will rate most employees (and students) as “average”—that is an unavoidable mathematical and statistical fact. Yet too many performance evaluation systems eschew that honesty and skew ratings at the upper ends of the rating scale.

Gutman, his overall average rating was 3.4, and he received ratings below 3 in a subcategory under Workforce Development, Accountability, Political Awareness, and Conflict Management. Comments in both evaluations reflected that part of the issue was that both captains had continued to display stiff formality and refused to engage freely in office conversations, particularly when it came to avoiding any routine interactions with Ms. Bickley. Capt. Gutman's evaluation also reflected other issues regarding his perceived inflexibility with his subordinates. Both captains were distressed by their evaluations, and Capt. Gutman submitted a rebuttal, which was filed with the evaluation. Later, both would claim that the evaluations were retaliatory because they had raised concerns about Justine Bickley's conduct.

Also in February 2019, an anonymous caller, who called herself "Michelle," called into the Township Administration offices to report that she had a picture of Chief Herzog dressed in blackface and was going to share it with the media. Township Administrator Larry D. Burks took the call and later spoke with Chief Herzog, who adamantly denied ever wearing an outfit like that, though he did later show Mr. Burks a picture of him and his wife dressed as a cartoon burglar, wearing a stocking cap, a black mask, and a black-and-white, horizontally striped, black-and-white shirt. Toward the end of the workday, Chief Herzog mentioned this call to Capt. Hensley, who said nothing at the time. The next day (he believes), Capt. Hensley asked to meet with Chief Herzog to tell him that he had seen this picture, allegedly posted on Facebook by the Chief's wife [REDACTED] in October 2015. Capt. Hensley added details: An Afro wig and a "Hands Up, Don't Shoot" tee-shirt. Chief Herzog continued to deny that he ever dressed this way, and nothing further happened.

Things remained in this tense but relatively quiet state until January 2020. Sgt. Paul Brent Lovell had scored highly in an examination process for a lieutenant position,⁷ and the Chief also appointed him to a position as one of two community affairs sergeants. The Chief has on occasion been out socially with Brent and Courtney Lovell, and Sgt. Lovell has at times been overly familiar with the Chief, referring to him as "Joel" in conversations with other officers. Some officers grumbled that Sgt. Lovell re-tweeted Chief Herzog's posts on Twitter with great frequency, and for these reasons, some in the department see favoritism in how the Chief treats him, a perception these two captains share. Of note, the Chief directed Capt. Gutman to write up Sgt. Lovell with a "PSL"⁸ for his misuse of Twitter in an on-line quarrel with fellow officers—though he did ask Capt. Gutman to "go easy because his heart was in the right place." Capt. Gutman said that he issued the PSL without any changes from the Chief.

On Saturday, January 18, 2020, [REDACTED] Capt. Hensley's wife, posted on Facebook "Today's HS vocabulary word" with a definition of "cronyism," which "includes appointing 'cronies' to positions of authority, regardless of their qualifications." Lt. Mike Quinn approached Capt. Hensley and asked him, "That post [REDACTED] posted; is that about work?", and he said that Officer Rob Obermeyer, the union president, had asked him about the post. Capt. Hensley steadfastly

⁷ Capt. Hensley and Capt. Gutman participated in the interview panels that generated an examination score, and they had exactly the same weight in the overall ratings as Chief Herzog and Assistant Chief Rebholz.

⁸ This stands for "police service log," a formal notation in an employee's personnel file, and a PSL can be either a reprimand or a commendation.

denied any connection between the post and work—noting repeatedly that there was no mention of the West Chester Police Department—but others in the department speculated that [REDACTED] post reflected Capt. Hensley's own feelings about Sgt. Lovell's progress in the department.

On January 28, Chief Herzog, Assistant Chief Rebholz, and the Township's relatively new Human Resources Manager Tonya N. Charles, met with Capt. Hensley to review a written letter from Ms. Charles to Capt. Hensley "to document the expectations for your performance as Captain. . . ." There was no written reference to the issues involving the captains' treatment of Ms. Bickley, but Capt. Hensley was told that he needed to "[p]romote a positive team environment through the department" as well as "[u]phold a positive image of the department and yourself inside and outside of work." Capt. Hensley was also directed to "[i]nform your superiors of participation in any outside function where you may be perceived as a representative of the West Chester Police Department." This was a reference to Capt. Hensley's attendance at the "Men of Honor" event in Cincinnati in November 2019, a black-tie event recognizing African American men who have achieved distinction in professional and business fields. He had gone as the guest of Tommy Loveberry, a friend who is also president of the West Chester Citizen Police Academy Alumni Association. While there, Capt. Hensley met Cincinnati Police Chief Eliot Isaac, who later mentioned to Chief Herzog that "I met your captain." Chief Herzog was irritated that Capt. Hensley had not mentioned to him that he was attending this event, a positive thing for the department, and he was embarrassed to learn about it only from a fellow police chief of the region's largest police department.

The "HR meeting," as most participants would later call it, started with a discussion of the "cronyism" post, and it did not go well. Capt. Hensley, describing himself as feeling "ambushed," grew very angry, repeatedly interrupting the Chief and Ms. Charles, and saying, "This is ridiculous." Regarding [REDACTED] post, Capt. Hensley said, "I'm not aware of when she posted it or anything else about it." After discussion of his treatment of Justine Bickley, Capt. Hensley reiterated that he "knows nothing about that post, never heard of such idiocy." At that point, Chief Herzog grew quite angry at Capt. Hensley for "calling him an idiot." Later, the discussion was calmer and more respectful, and Capt. Hensley even apologized for his tone. At the close of the meeting, Col. Herzog and Lt. Col. Rebholz talked about how "that started badly but was better by the end."

Early in the meeting, Capt. Hensley requested permission to record the meeting on his phone, which was granted. A text message came in during the meeting, interrupting the recording, so the meeting was recorded in two segments, with an unrecorded break.

After Capt. Hensley reiterated that he is not comfortable with Ms. Bickley and that "I will not have personal interactions with her," there was an extended discussion about how both the Chief and Assistant Chief saw Capt. Hensley as conspicuously treating Ms. Bickley differently. After the interview ended, the Chief and Assistant Chief decided they needed to talk with Capt. Gutman about the issue, and they were startled when Capt. Gutman said that he knew about [REDACTED] "cronyism" post because he had discussed the issue with both Lt. Mike Quinn and Capt. Hensley. Feeling that Capt. Hensley had lied to them when he said he "knew nothing" about his wife's post, they called Capt. Hensley back in the next day and told him that they would need a copy of the recording. Capt. Hensley replied that "I don't have it, I deleted it." The Chief then asked, "You

deleted it?" and Capt. Hensley replied, "Yes." Chief Herzog told him that he would need his cell phone so that Officer Mike Sly, the department's expert on retrieving data from electronic devices, could try to recover the recording. Capt. Hensley immediately replied, "I will get you a copy; you are not getting my phone." He provided a copy of the recording to the Chief later that day or the next, explaining in our interview that he had in fact deleted the recording from his phone after e-mailing the recording to himself, and that he retrieved the copy from his e-mail. The Chief and Assistant Chief were again stunned by what they saw as Capt. Hensley's second lie in their conversations: his claim that he had "deleted" the recording without disclosing that he actually had it, just not on his cell phone.

On that basis, Chief Herzog directed the internal affairs section, called Integrity and Development or I&D at the West Chester Police Department, to investigate the allegation of dishonesty. Lt. Paul Haering, one of the longest-serving officers in the department, conducted the investigation, assisted by Sgt. Mike Weingartner, who is also assigned to I&D. They interviewed Lt. Mike Quinn, the Chief, the Assistant Chief, and Tonya Charles before interviewing both Capt. Hensley and Capt. Gutman. Of note, Lt. Haering and his colleagues in I&D knew absolutely nothing of the "back story"—the "winking incident," the complaints about Justine Bickley's alleged "misconduct," or the resulting tension and conflict among the command staff. In fact, Lt. Haering was totally startled by the allegation that Ms. Bickley dressed in an inappropriate or provocative manner: in his role, he would be in their work area to see the Chief or Assistant Chief several times each week, and "my reaction was 'what are they talking about?'" He was also startled by the Jamie Hensley he heard when he listened to the recording of the HR meeting—very argumentative and not in control of his demeanor, even insubordinate toward the Chief.⁹ The I&D interview with Capt. Hensley was in two stages, because Capt. Hensley asked to return to speak to the team a second time, mainly to add his extensive allegations about retaliation from the Chief and Assistant Chief. Lt. Haering and Sgt. Weingartner also interviewed Capt. Gutman as a fact-witness. Lt. Haering was preparing his report on the investigation to submit to Chief Herzog when the Township administration asked him to pause the report pending my investigation. The report was near completion and could have been submitted promptly if and when Lt. Haering were directed to do so.¹⁰ In his interview, Lt. Haering stressed that he and his unit were able to conduct the internal investigation and shape their conclusions free of any interference or influence from either the Chief or Lt. Col. Rebholz, who is Lt. Haering's immediate supervisor.

On February 24, 2020, Capt. Hensley submitted a 22-page rebuttal to the letter that he had received from Human Resources in a letter to Township Administrator Larry Burks. In the letter, Capt. Hensley detailed at length allegations of retaliation following his complaints about Justine Bickley. Not long after that, Capt. Joe Gutman also submitted a 15-page letter to Mr. Burks on March 11, 2020, setting out his own allegations of "retaliation and inappropriate workplace conduct." While both captains and their attorney stressed throughout our interviews that the issues involving Ms. Bickley's conduct were "ancient history" and they had had no issues with her dress or conduct for

⁹As stated above, Lt. Haering is a very long-term employee at the West Chester Police Department, with 35 years of total service. He trained both Chief Herzog and Assistant Chief Rebholz, and he knew both Capt. Hensley and Capt. Gutman when both were police officers and he was a sergeant and then lieutenant. He thus knows these men very well.

¹⁰ Capt. Hensley's sudden resignation on June 23, 2020, obviates the need to submit that report, unless the Township administration directs otherwise to document what happened.

well over a year, both spent much time in their complaint letters detailing those accusations of her alleged “inappropriate conduct” to the Township Administrator.

Late in 2019, the Township had secured the services of an organizational psychologist by the name of Henry J. Cohen, Ed.D., who worked with the command staff as well as Justine Bickley and Jan Heimpold, who was then a secretary in the Chief’s office but later retired. Dr. Cohen facilitated group discussions designed to improve the interpersonal and workplace dynamic, and he also conducted individual interviews with each the participant as well. Dr. Cohen asked each of them to complete a survey on communications issues within the work team, and he planned to reconvene the group to review the survey results and then work on further teambuilding. When the formal complaints and accusations were submitted in late February and early March, however, the Township administration and the Law Director decided that there needed to be a more formal investigation of both these allegations and the underlying issues and dynamics among the command staff. In light of that coming investigation, they also decided that any further teambuilding work would have to await factual determinations and possible steps in response.

My charge from the Township, then, was to look into what had happened, starting with the issues arising after Ms. Bickley’s hire, the captains’ allegations of retaliation and misconduct on the part of Chief Herzog, and the overall dysfunction within the command staff of the Police Department. With that as my focus, I began my investigation.

II. THE INVESTIGATION AND ISSUES PRESENTED.

This investigation commenced on March 19, 2020, when I met with Township Administrator Larry Burks, Assistant Administrator Lisa Brown, and Donald L. Crain, Esq., the Township Law Director, to review the background of this case. Ms. Brown also provided me a binder of documents, including Capt. Hensley’s and Capt. Gutman’s retaliation complaints, their attorney’s letter alleging retaliation, their two most recent performance evaluations, copies of some of the Facebook posts by the captains’ wives, and other documents relating to the issues.¹¹ At the meeting, we discussed a list of possible witnesses to interview, a rough schedule for the interviews, and we also discussed whether we would offer use immunity under *Garrity v. New Jersey*¹² to either of the captains to eliminate any issue of possible self-incrimination under the Fifth Amendment.

My investigatory interviews proceeded as follows:

- April 16, 2020: Lisa D. Brown.
- April 21-22, 2020: Township Administrator Larry D. Burks.

¹¹ Elizabeth Tuck, the captains’ attorney, also e-mailed me a number of documents later, including the captains’ personnel files, which were very positive overall and free of any past disciplinary actions or notations.

¹² In *Garrity v. New Jersey*, 385 U.S. 493 (1967), the US Supreme Court held that public employers could only compel an employee-witness to answer questions that might incriminate him or her under criminal law if the employee was assured that nothing said in the interview could be used against the employee in any subsequent criminal investigation or proceeding (though it could be used in later administrative or disciplinary proceedings). To be clear, there was no reason to believe that any criminal issue was at all present in this investigation, and that remains true at its conclusion; the *Garrity* notice was issued simply to remove any possible question about that.

- April 23 and 27, 2020: Lt. Paul E. Haering.
- April 23, 2020: Joan M. Germann, Esq. (former Human Resources Manager, and also formerly known as Joan Tumblison during part of her employment).
- April 24, 2020: Human Resources Manager Tonya N. Charles
- April 28, 2020: Henry J. Cohen, Ed.D., organizational psychologist, and Janelee (Jan) Heimpold, former Police Department Secretary.
- May 4, 2020: Courtney R. Lovell.
- May 5, 2020: Justine M. Bickley.
- May 8 and 11, 2020: Lt. Col. Brian L. Rebholz, Assistant Chief.
- May 20-21, 2020: Capt. Jamie L. Hensley.
- May 27-28, 2020: Capt. Joseph S. Gutman.
- June 2, 2020: Supplemental telephone interview of Assistant Chief Rebholz.
- June 3-4, 2020: Police Chief Joel M. Herzog, including a site visit to Police Department command staff office area.
- June 9, 2020: Telephone interview of Robert Reese, retired police lieutenant.

The conflict among members of the command staff has festered for more than two years, born out of the initial allegations that the captains made about Justine Bickley's hiring and conduct, the Chief's and Assistant Chief's reactions to those claims, and their perception (shared by Ms. Lovell and Ms. Bickley herself) that they shunned her at work, as well as the captains' perceptions that their superiors were retaliating against them for raising those concerns. The facts uncovered in my administrative investigation present six, key issues for consideration in this report, as follows:

- A. Did the allegations that Capts. Hensley and Gutman made about Justine Bickley—her hiring and her dress and conduct in the office—have any reasonable basis, and if not, how should the Township view those claims?
- B. Has either Chief Herzog or Assistant Chief Rebholz retaliated against Capt. Hensley or Capt. Gutman for making their allegations about what they see as inappropriate conduct?
- C. Has Chief Herzog made discriminatory comments of a sexual, racial/ethnic, religious, or other, inappropriate nature at work or while with subordinate employees, and if he has made inappropriate comments, what response is warranted? As part of this issue, did Chief Herzog dress for Halloween in October 2015 in blackface and Afro-style wig, wearing a shirt mocking the Black Lives Matter movement in the wake of controversial police killings of African American men?
- D. Should the Township take further actions to document expectations in the wake of Chief Herzog's involvement in the aftermath of the arrest of his friend Jeff Couch, and were Capt. Gutman's allegations about the content of text messages accurate?
- E. Did Chief Herzog manipulate the content of personnel files of employees under consideration for other positions in a way that represents improper handling of public records?

- F. What are the appropriate next steps for the Township to take in response to these findings to respond to misconduct or change a dysfunctional leadership dynamic?

I will first offer an executive summary in which I will briefly summarize my main conclusions on each of the issues raised. In the body of this report, I will analyze in far more detail what I learned during the investigation on each issue. I will also offer my conclusions on what has happened and my recommendations whether those conclusions warrant consideration of further action, though any decision on whether to impose discipline and to what degree lies, of course, with West Chester Township alone.

III. EXECUTIVE SUMMARY.

- A. **Did the allegations that Capts. Hensley and Gutman made about Justine Bickley—her hiring and her dress and conduct in the office—have any reasonable basis, and if not, how should the Township view those claims?**

The short answer to this question is: absolutely not. Justine Bickley has been a good employee, hired following a series of interviews in which multiple people took part. The Chief requested that she be at least interviewed as a favor to a colleague and friend, but Ms. Bickley earned the job. Despite the captains' baseless insinuations that the Chief and Ms. Bickley had some kind of prior connection or that they knew of something negative in her background, neither is true.

No one other than Capts. Hensley and Gutman ever claimed to see Ms. Bickley wear clothing that violated the Township dress code or that was inappropriate in an office environment. The captains' expectations of how women should dress in a professional, business environment are antiquated and even sexist to some degree.

Both Capt. Hensley and Capt. Gutman allege comments or actions by Ms. Bickley that "made them uncomfortable" and that they saw as suggestive and inappropriate from a female co-worker. It started with Ms. Bickley winking at Capt. Gutman at a Police Memorial event in May 2018, with his wife standing near him. It turns out that Ms. Bickley winks widely at men and women alike, and there was no reasonable basis to see that as flirtatious. Each of the examples they cite falls so short of the legal threshold (offensive to a reasonable person) as to be on their face frivolous and even ridiculous. Only one comment—to Capt. Hensley—had any sexual aspect at all, and that was miniscule: Ms. Bickley's query whether the captain or his wife (who home-schooled their children) had any resources on sex education that might help her, as a then-single mother, with her 12-year-old son. The incidents in question formed no basis for the different and cold treatment to which they have subjected Ms. Bickley for two years. What the captains have done to Justine Bickley is wrong, as a matter of fact and decent human resources management, and they have done her a deep, moral injustice.

- B. **Has either Chief Herzog or Assistant Chief Rebholz retaliated against Capt. Hensley or Capt. Gutman for making their allegations about what they see as inappropriate conduct?**

Capt. Hensley and Capt. Gutman cite a wide array of policy decisions and changed ways of doing business that they see as retaliatory. Both make the case, with evident emotion, that their relationship with both Chief Herzog and eventually Assistant Chief Rebholz took a sharply negative turn and continued to spiral downward “after we complained about Justine Bickley.” It is obvious that all five members of the command staff are deeply emotionally wounded and that trust among them has been badly damaged if not shattered. But I do not find the operational or policy changes they cite to be retaliatory in nature. I do find that if the work climate has any hope of being restored to functionality, those command staff members who remain must work far harder at rebuilding open, day-to-day communication.

Both captains cite less-than-optimal comments and ratings in their 2019 evaluations as retaliatory. I find no evidence to support that. No one is entitled to an evaluation that is purely positive, with nothing but praise. Both captains were continuing to treat Justine Bickley in a different and less positive way, and it was appropriate to reflect that they had not changed that behavior despite repeated requests and directives from their superiors. The remarks about Capt. Gutman’s more rigid supervision style echo comments that I heard from other witnesses I interviewed outside the command staff. Evaluations should reflect needed improvement as well as praise, and too often do not.

Capt. Hensley also complains that the letter that Tonya Charles issued to him in the January 28 meeting, setting forth expectations for performance and improvement, was retaliatory. Documenting the need for improved performance where warranted is not retaliation: it is effective management.

Finally, the internal investigation launched in the Integrity and Development section following the January 28 meeting is not retaliatory—it resulted from the fact that, in two respects, Capt. Hensley may have lied to his superiors in that meeting. For any police officer, let alone a captain, to lie to a superior is not only a potentially dischargeable offense but may make that officer functionally unable to testify in court under the *Brady/Giglio* doctrine. The Police Department had no responsible choice but to investigate, and Lt. Paul Haering of the I&D section conducted a professional and competent investigation, the conclusions of which he was prepared to share.

C. Has Chief Herzog made discriminatory comments of a sexual, racial/ethnic, religious, or other, inappropriate nature at work or while with subordinate employees, and if he has made inappropriate comments, what response is warranted? As part of this issue, did Chief Herzog dress for Halloween in October 2015 in blackface and Afro-style wig, wearing a shirt mocking the Black Lives Matter movement in the wake of controversial police killings of African American men?

In their written complaints, both Capt. Hensley and Capt. Gutman allege that Chief Herzog has made remarks about the appearance of women, including talking about Justine Bickley’s attractiveness, sexual comments about other women, and offensive, joking comments about African-Americans or other ethnic or religious groups. None of the allegations involved the Chief using slurs or overtly racist or discriminatory language. Both captains agree that after they told Chief Herzog that such comments offend them, he desisted from making them.

Chief Herzog, by his own admission, has made careless and less-than-appropriate remarks in conversations with people he trusts and feels comfortable with, including these two captains. At times, he has commented on the attractiveness of women, including Ms. Bickley, and he has related stories that include comments that could be offensive. I conclude that both captains have embellished and distorted some of the comments, but there is no doubt that Chief Herzog needs to be told, bluntly and clearly, that he can *never* make comments about the attractiveness of employees' looks or other comments that could be seen by a reasonable person as offensive or discriminatory, or he will lose his job. He is always the Police Chief: he needs to set the tone, both on-duty and off-duty in conversations with subordinates. In short, he needs to clean up his speech.

The most serious allegation was that a picture posted on Facebook in October 2015 showed Chief Herzog and his son, also a police officer, dressed for Halloween in blackface, an Afro-style wig, and yellow tee-shirts with the slogan "Hands Up, Don't Shoot," which would be an obviously racist taunt at the Black Lives Matter movement that arose in the wake of high-profile deaths of Black men in encounters with police. I conclude that no such picture was ever posted, that at best Capt. Hensley has grossly distorted a burglar costume from that year (with no blackface, no wig, and no tee-shirt), and that this fabrication was a defamatory attack on not only the Chief but his son. Further, Capt. Hensley outright lied in our investigatory interview when he said that retired Lt. Bob Reese told him that he had seen the picture. Mr. Reese never saw such a picture, has never been on Facebook, and never told Capt. Hensley that he had seen any picture. I warned Capt. Hensley—along with every other employee whom I interviewed—that I would recommend the discharge of any employee who lied or withheld information in the interview, irrespective of whatever I concluded in my investigation of the underlying issues, and along with the pending I&D investigation, there are serious issues whether Capt. Hensley was dishonest on multiple occasions.

D. Should the Township take further actions to document expectations in the wake of Chief Herzog's involvement in the aftermath of the arrest of his friend Jeff Couch, and were Capt. Gutman's allegations about the content of text messages accurate?

Chief Herzog's attempt to visit and support his friend and prominent political donor Jeff Couch following his arrest represented a serious error in judgment. While Chief Herzog saw this as supporting a longtime friend in a time of enormous stress, when it comes to someone arrested by his department, Joel Herzog can never be "just a friend" instead of the Police Chief. There is no evidence that the Chief interfered with or tried to influence the prosecution of Mr. Couch in any way. While the Township did not ignore this problem—Township Administrator Burks cautioned the Chief in a written memorandum not to do this in future—I recommend a stronger warning that any further lapse of judgment with regard to professional boundaries would result in the Chief's termination. The appearance of impropriety is unavoidable, however benign the Chief's motives may have been.

Capt. Gutman's description of what the Chief allegedly said in text messages with [REDACTED] Couch, Jeff Couch's wife, were both inaccurate and seriously distorted and embellished. This fits a pattern of both captains putting the Chief's actions in the worst possible light, in this case in a way that was not truthful.

E. Did Chief Herzog manipulate the content of personnel files of employees under consideration for other positions in a way that represents improper handling of public records?

Both captains allege that Chief Herzog removed negative items from the personnel files of two Police Department employees, allegedly to help them get jobs elsewhere. The Chief acknowledged briefly removing adverse police service logs (PSLs) from two personnel files while he reviewed employee appeals of the write-ups. In one case, he did so before the West Chester Police Department even received a request to review the personnel file; in the other, the employee was seeking a position internally for which she was not selected. In neither case was any public record destroyed, and I find no evidence that the Chief intentionally manipulated public records to conceal information. Department heads, including police chiefs, place and remove items in personnel files with considerable frequency; unless a public record is destroyed without legal authorization, this does not represent any violation of Ohio public records law.

F. What are the appropriate next steps for the Township to take in response to these findings to respond to misconduct or change a dysfunctional leadership dynamic?

At one point, a key issue was whether Capt. Jamie Hensley should face disciplinary charges and possible discharge for lying, both in his January 28 meeting with Chief Herzog and Assistant Chief Rebholz and in his interview with me on May 21, 2020. While I conclude that he did lie to me in our interview, and the Integrity and Development unit stood ready to submit the report on their investigation into Capt. Hensley's statements on January 28, Capt. Hensley's resignation moots the need for any disciplinary action.

For Capt. Joe Gutman, who faces no disciplinary charges or issues at this juncture, he still faces a critical choice. If he wishes to remain as captain, he needs to accept two realities in his workplace:

(1) It is Joel Herzog, not he, in whom the Board of Trustees have entrusted the management of the Police Department. The Chief must comply with applicable laws, but he is free to make management decisions with which Capt. Gutman may disagree, even strongly so. If the Trustees are dissatisfied with Chief Herzog's management of that trust, they are free to remove him. If Capt. Gutman cannot live with the Chief's management style, he is free to resign or seek employment elsewhere. If he stays, he must accept the Chief's authority and support him in his role as Chief.

(2) It is the choice of the Police Chief to select his [REDACTED] with the approval of the Board of Trustees. Neither captain supervises her, and neither captain has any voice in her employment. Justine Bickley has done a fine job in that role. Capt. Gutman should be required in a performance action plan to treat Ms. Bickley in a warm, collegial, polite, and kind manner so that no objective outsider would be able to tell any difference from how he treats her as opposed to any other employee in the Chief's office staff. Failure to do so should result in discipline and, if needed, termination from employment.

For Chief Herzog and for Assistant Chief Rebholz, there is no basis for disciplinary action. For this dysfunctional and toxic workplace to heal, however, they must communicate more effectively with Capt. Gutman and not avoid him to avoid the negativity. I also recommend a performance action plan for Chief Herzog spelling out those expectations, including regular, structured communication sessions involving Assistant Township Administrator Lisa Brown.

I finally recommend that Dr. Cohen resume his team-building efforts in the wake of this report and any other actions that the Township may take as a result. Unless this dysfunction among the Police Department's command staff can be changed, and *all* involved commit to work hard to make the individual changes necessary for that to happen, the situation is simply untenable.

IV. DETAILED ANALYSIS OF ISSUES.

I will now analyze in greater detail what I learned from the interviews on the key issues that I was asked to investigate. The Township Administrator and Law Director also requested that I share not only my factual conclusions but also my recommendations for what to do next, based on my legal analysis as a labor and employment lawyer who has worked for and with public employers, including law-enforcement agencies, for more than 35 years. As above, each issue will be addressed in turn.

A. Did the allegations that Capts. Hensley and Gutman made about Justine Bickley—her hiring and her dress and conduct in the office—have any reasonable basis, and if not, how should the Township view those claims?

During my interviews with Capt. Hensley and Capt. Gutman, both they and their attorney repeatedly stressed that they have no current issue with Justine Bickley's work, her dress, or her conduct toward them, and have not for a considerable period of time. For that reason, their attorney Lisa Tuck repeatedly objected to how much time I was spending on questions about their earlier complaints about Ms. Bickley and their allegations regarding her "misconduct"—the captains' word, not mine. There are, however, two major problems with the captains' apparent desire now to move past the issues around how they have treated Ms. Bickley. First of all, by everyone's account, the conflict between the two captains and Chief Herzog, which has since morphed into a toxic and dysfunctional relationship among all five members of the command staff, had its origins with the employment of Ms. Bickley as [REDACTED] in March 2018 and events in the succeeding two months. Second, while the captains claim that they have had no issues with Ms. Bickley for well over a year, they continue to treat her in a notably cold and distant manner that everyone who works in that area, other than they, readily sees. Jamie Hensley and Joe Gutman are captains, the third-highest rank within the Police Department, and as such they are senior-level managers. That means that they are not free to vent either their whims, dislikes, or discomfort in the workplace, because their actions can not only bind West Chester Township as a matter of law but could even create liability for the Township under the legal doctrine of respondeat superior. That means that their actions, particularly any wrongful actions, can be imputed to the Township; when they act, as a legal matter, they at times *are* West Chester Township. It is also clear under Ohio law that police officers are held to a higher standard than members of the public or even other public employees. *See, e.g., Jones v. Franklin County Sheriff*, 52 Ohio St.3d 40, 43 (1990). A

senior manager such as a police captain is held to an even higher standard, and it is against that standard that we must measure both their actions and their judgments in 2018 to the present time.

1. The Hiring of Justine Bickley.

Ms. Bickley had been out of the workforce for some time as a stay-at-home parent, and she was looking for work following a difficult divorce. She saw that a position was open for an [REDACTED] to Chief Herzog; the position was vacated when Courtney Lovell was promoted to Administrative Bureau Commander. The man she was then dating (and to whom she is now married) lived and worked in West Chester Township, and she decided to apply for a job there. Her sister's husband had worked in several roles in a long career in law enforcement, and he is also a longtime acquaintance and colleague of Chief Herzog. She listed him as a reference on her application; to maintain Ms. Bickley's confidentiality, I will call him Quinn Andersson. Ms. Bickley has a master's degree in education and had taught business classes, including Excel, to middle-school students, and she had also previously worked in a law office and for Fifth Third Bank. At some point during the process, the Chief received a telephone call from Mr. Andersson, who said that his sister-in-law had applied and would be "perfect for the position," and that she was getting back in the workforce. Mr. Andersson told Chief Herzog that "it would help her confidence to get an interview if she's qualified." The Chief agreed that she had solid credentials, at least on paper, and said that he put her in his "yes pile" for an initial interview. Later in the process, the pool had been narrowed to three candidates: Ms. Bickley, a former employee of the West Chester Fire Department named Rhonda, and an employee who then worked for Walmart. Lt. Col. Rebholz preferred Rhonda but the Chief was less impressed; ultimately, he recommended Ms. Bickley after the interviews. While Capt. Gutman and Capt. Hensley assert that the former Fire Department employee was clearly more qualified, they were not part of the selection process so there is little basis for that conclusion, even if the selection were up to them, which it was not. The [REDACTED] does not report to them, do their work, or answer to them in any way. Yet, from the outset, it seems that the captains had a real problem with Justine Bickley's presence.

Granting a job applicant an interview based on a telephone call from a longtime colleague may not represent a laboratory-condition, pure hiring process, but it was hardly illegal or a violation of Township policy, let alone evidence of anything corrupt, as the captains darkly intimate. The reality is that in both local government and in the business world generally, personal connections may open the door for a candidate to at least be considered. That happened here, but as Lt. Col. Rebholz verified, even though he preferred another candidate, Ms. Bickley did well in the interview process.

The captains also state their belief, with no evidence, that Chief Herzog and Justine Bickley knew each other or had some prior relationship before she applied. Both the Chief and Ms. Bickley told me, however, that they had never met each other prior to her interview.¹³ This was simply a baseless assertion on their part, one of many in a string of speculative claims. There is no absolutely no evidence of any prior connection or relationship between the Chief and Justine Bickley.

¹³ While I have no reason to doubt Chief Herzog's account—he readily admitted to some statements that put him in a less than flattering light—Ms. Bickley is particularly credible on this point. Until she was briefed in mid-June, Ms. Bickley had no idea that this controversy had anything to do with her—her hiring, the winking, or what she did at work. Accordingly, at the time of my interview with her, she would have had no reason to hide any prior contact with Chief Herzog.

Even more disturbingly, Capt. Hensley later intimated to Chief Herzog that he knew of something negative, even disqualifying in her background, but he always declined to say exactly that that was. In my interview, facing a direct order to answer my questions, Capt. Hensley could no longer evade saying what it is that he knew—and the answer boils down to nothing at all. Capt. Hensley said that he “didn’t want to spread unsubstantiated rumors—about promiscuity, that she had cheated or had affairs with other people’s husbands, had broken up marriages, and that she couldn’t wait to work for a police department to find a husband.” While these were *rumors* for which he had zero proof or even evidence, this nonetheless “shaped my feelings about working around her.” It is hard to fully capture how reckless and utterly irresponsible Capt. Hensley’s aspersions are. I even hesitated to discuss this here—given the baseless stain that this might make in some people’s minds about Ms. Bickley—but I could not capture this aspect of Capt. Hensley’s wrongdoing without describing what he said. Even if any of this were true—and *there is no reason to believe that it is*—would anyone seriously contend that such behavior would ever be brought up for a male candidate in a police department, at any level? Of course, this would not happen—this is at least one example of Capt. Hensley holding women to different work standards that have been outmoded—and even illegal—for decades. For Capt. Hensley to even drop those defamatory hints as part of his campaign against Justine Bickley was frankly disgusting.

2. Ms. Bickley’s Early Employment.

While both Capt. Hensley and Capt. Gutman cite alleged errors that Justine Bickley made once she started her job, I give little credence to these allegations, given that she can seemingly do little right in their eyes. Her supervisor is Courtney Lovell and she works almost exclusively for Chief Herzog, and both have been quite pleased with her performance. Several witnesses throughout West Chester Township government commented on how consistently pleasant and eager to be helpful Ms. Bickley is. The only people who have expressed any substantial issues with her performance are Capts. Hensley and Gutman.

3. The Winking Incident.

The winking incident at the Police Memorial event was not handled as well as it could have been. When [REDACTED] spoke with Courtney Lovell and Ms. Lovell later texted Ms. Gutman and said that she would speak with Ms. Bickley, she should have carried out that commitment. Apparently, then-Human Resources Manager Joan Tumblison suggested that this was inadvisable given the lack of evidence that Ms. Bickley did anything wrong; while I agree with that she did nothing wrong, it would have been better to at least follow up with the Gutmans about what conclusions had been reached. Capt. Gutman believed that Township officials had spoken with Ms. Bickley, and it is unfortunate that he was not told what the Chief and Human Resources had concluded. While no one can say if that would have headed off later drama, given the reaction of both the captains and their spouses, it would have been a more transparent outcome.

Another controversy that arose during the handling of this complaint was the Chief’s decision to modify the Police Department’s discriminatory harassment policy to eliminate the provision that the complainant would be told what specific action the employer took in response to a complaint of harassment. Both captains repeatedly cite this change as evidence that Chief Herzog “will do

anything to protect” Ms. Bickley. Ms. Bickley, of course, needed no “protection”—she had done nothing in violation of the policy. The original policy was based on a model Lexipol¹⁴ policy, but Joan Tumblison, herself a lawyer, suggested the modification, correctly saying that the complaining parties (such as the captains) have no right to know the details of what action, including counseling or discipline, that an employer has taken in response to a specific complaint. That is true as far as it goes; in this case, however, this was an “unforced error” for three reasons. First, the timing of the change lent itself to the budding conspiracy theory that the Chief has some special relationship with or defensiveness about Justine Bickley. Second, combined with Courtney Lovell’s unfulfilled promise to talk with Ms. Bickley about the winking, it looks like steps were skipped. Third, as a matter of practice, it is certainly advisable to give the complainant some substantive briefing on at least the conclusions of the inquiry or investigation. Here, it would have been better to have met with the captains and simply told them the truth, however unwelcome it may have been: “I have reviewed your complaints and talked with Ms. Bickley [which should have happened], and your complaints have no merit. Her winking was not flirtatious, Capt. Gutman was not singled out in any way, and neither her dress nor her behavior has been inappropriate. Get on with your work and treat her professionally, as we expect her to do with you.” Given the captains’ fixation on Ms. Bickley’s behavior, it may have made no difference, but it would have been the better practice.

But after reviewing all of the captains’ written complaints, interviewing the two of them over a total of four days, and hearing from Ms. Bickley, Ms. Lovell, the Chief, the Assistant Chief, and a number of other current and former employees who interacted with Ms. Bickley frequently, I find that there is absolutely no evidence that Ms. Bickley’s behavior was flirtatious in any way. It is, therefore, not at all reasonable to claim that her behavior was sexually offensive to a reasonable person. Capt. Gutman and his wife may have been genuinely offended as a subjective matter; different people have different standards and expectations when it comes to interactions with persons of the opposite sex, based on personal beliefs, cultural and religious standards, and perhaps personal history. But any manager’s standards for conduct at work (including interacting with Ms. Bickley) must be evaluated through the lens of a reasonable person, not that of the hypersensitive, culturally conservative, or overly jealous—and the governing principle is that women and men must be treated equally. As a practical matter, it is highly unlikely that Justine Bickley would have chosen to “flirt” with Capt. Gutman in a large, public event with his wife standing right there with him! But in any event, she did not flirt with him or make an advance—she winked at him.

What I learned (and others already knew) is that Justine Bickley winks frequently and not just with men. She said that she grew up with a sister and the two of them winked frequently, when joking, when making friendly connections with people, and as a way of acknowledging others in greeting

¹⁴ Lexipol LLC is a private company that provides policy manuals, training bulletins, and consulting services to law enforcement agencies, fire departments, and other public safety departments. It is widely respected in the field, but it is one of several corporate resources for model policies. In his written complaint of retaliation that he submitted this spring, Capt. Gutman claimed that the Lexipol model policy that was changed at Ms. Tumblison’s urging was, in fact, “correct.” This is an absurd overstatement. Lexipol is *not* law—state and federal anti-discrimination laws are the only binding sources in this area. Many witnesses describe Capt. Gutman as quite knowledgeable and a skilled police professional but that he often displays a black-and-white, inflexible, “there is only one right answer” world view. This would be an example of that. Lexipol’s policy is not “correct”—it is one of many model policies from which a law-enforcement agency can choose. In my own three decades as a human resources director in local government, I have found much of Lexipol’s work innovative and helpful; in other cases, I have found their policies overly formalistic and overstated, including inserting employee “rights” that do not, in fact, exist.

and conversation. It is something she does to be friendly, like a smile or wave of the hand, usually without consciously thinking about it. In a workplace, particularly one as overwhelmingly male as the West Chester Police Department, winking risks being misinterpreted, of course. During our interview, I told Ms. Bickley that winking is not advisable in a workplace setting and that she should stop doing so—not because she committed any offense but because a wink could be seen as something more than just being friendly. She understood and readily agreed to stop doing so at work. But Ms. Bickley at that point had no idea that her winking was in some way the “first domino to fall,” the trigger for the dysfunction that followed.

4. The Aftermath of the Winking Incident.

Chief Herzog summarized his understanding of Capt. Gutman’s and Capt. Hensley’s concerns about Ms. Bickley in a memorandum to Joan Tumblison, dated May 21, 2018. Capt. Gutman disagreed with some of the Chief’s summary, and he submitted his own memorandum to Chief Herzog and Ms. Tumblison on May 24. Both Capt. Gutman and Capt. Hensley raised other things that Ms. Bickley did that made them uncomfortable, including working late at the office when most others were gone, leaving one or other of the captains alone in that area with her, and they also objected to conversations she had with them that they felt were out of line or suggestive. I will address those claims further below.

But even before the winking incident, [REDACTED] and [REDACTED] began posting memes on Facebook reflecting their negative feelings about flirting, cheating, and jealousy. Some of [REDACTED] Facebook posts, joined in by [REDACTED] are offensive, sexist, and way off base. On April 23, 2018 (before the winking incident but perhaps reflecting reports of Ms. Bickley’s “uncomfortable behavior”), Ms. [REDACTED] posted a definition of “opportunistic whore” (clearly referring to a woman; the pronoun was “her”). On April 30, Ms. Hensley posted a meme stating that “single women have NO business interacting on a personal level . . . with . . . a married man. PERIOD.” True, there was no explicit connection to the West Chester Police Department—or to anything. This is what is known in social media as “vagueposting,” a post that begs questions and inevitably causes the reader to wonder what or who the poster is talking about. But after the winking incident, [REDACTED] posted a far more explicit photograph of a leering woman, with her shirt unbuttoned most of the way down her chest, winking in a very sexual way, adding her own caption: “I can spot a snake a mile away.” The meme itself stated, in all capital letters: “Call it female intuition, but you’re not fooling me.” In his written response to Chief Herzog’s memorandum, Capt. Gutman called this an “ambiguous post” and noted that the post “does not mention the West Chester Police Department, its operations, its personnel, or any facts somehow relating to this incident.” That is literally true—Ms. Gutman’s post, too, is another example of vague-posting—but it is disingenuous to pretend that this post is anything but an obvious reference to the winking incident. And if the other posts also reflected the captains’ wives’ objections to Ms. Bickley (or what their husbands were telling them about her), then this passive-aggressive campaign on Facebook was vicious and cruel.

The two captains are also correct that West Chester Township does not have the broad legal right to police the social media posts of employees’ spouses. There are obvious exceptions—if a relative were to post information that could endanger someone or damage an investigation through revealing details that the relative could only have learned from an officer, that could be a serious disciplinary

infraction. The captains are also not free to do indirectly what they could never do directly, such as attack or harass Justine Bickley through the cover of their wives' posts and then disclaim any responsibility. In that regard, their carefully choreographed and coordinated language about the posts is revealing—the posts were “ambiguous” and “don't mention the West Chester Police Department,” and, of course, “I know nothing about my wife's Facebook posts”—even though the posts just happen to track events that just happened where they work. Co-workers may have made the connection because the connection seems obvious to anyone who knows the players and what is going on.

There is a widespread perception among many in the department (and not just the Chief and Assistant Chief) that a major part of the problem is that [REDACTED] and [REDACTED] are threatened by or jealous of Justine Bickley and do not want her working near their husbands, and this is then reflected in the captains' treatment of her. I cannot know this, of course,¹⁵ and unlike the captains, I will not substitute speculation for facts. What I do have, however, is the content of their wives' posts, the authenticity of which was confirmed by Capts. Hensley and Gutman. The posts just before and after the winking incident in May 2018 seem to reflect warnings about the “danger” of single women being around married men. [REDACTED] specifically posted that “single women have NO business interacting on a personal level . . . with . . . a married man.” She is free to have her own beliefs, of course, but applied to a workplace, that expectation would be flatly illegal, and has been so since before Capt. Hensley was born. If Capt. Hensley believes that and were to try to act on that belief, that would place the Township at serious risk of liability for employment discrimination. Of note, Capt. Hensley has repeatedly stated to his superiors that he “will not have personal conversations” with Ms. Bickley. It may be only coincidence that he is echoing his wife's Facebook posts. The issue is not what a captain's spouse—or the captain himself—privately believes. The issue is how that captain acts at work. For that reason, it is the Township, not an employee spouse, that will set expectations for a how police captain conducts himself at work.

If in fact the problem is that Capt. Hensley and Capt. Gutman are simply uncomfortable working around a younger, attractive woman—as some of their complaints and their obsession about her dress in the early months of her employment would tend to indicate—then that, too, is inconsistent with their role as senior managers in the Police Department. Employees of the West Chester Police Department are expected to work with a wide range of employees without disparate treatment—all racial and ethnic backgrounds, varied religions and no religion, women and men, married or not, young and old, gay and straight. Far more is expected—and the law demands more—of senior managers such as police captains, for their actions and statements can be imputed to the Township if seen as discriminatory. If a captain cannot manage his discomfort around Ms. Bickley,¹⁶ then

¹⁵ Because neither Ms. [REDACTED] nor Ms. [REDACTED] is a Township employee, of course, I could not order them in for an interview nor did I seek to do so, as it is not their behavior I am evaluating but that of the two captains, along with Chief Herzog and Assistant Chief Rebholz. I cite their posts only because what was expressed in the posts is echoed in some of the things that the captains themselves have said about Ms. Bickley's interactions with them, and it was therefore the captains' own statements and behavior that made their wives' Facebook posts relevant to my investigation.

¹⁶ While Ms. Bickley was single when first employed, she was already seriously involved with a boyfriend whom she would go on to marry. That was one reason she was interested in the job with West Chester Township; her soon-to-be fiancé lived and worked there. None of that remotely matters to her employment or how the [note cont. next page]

the problem lies with that captain himself, *not* Ms. Bickley—who has the right to do her job without being viewed or treated as some kind of temptation or distraction.

5. The Captains' Allegations of Ms. Bickley's "Misconduct."

In their initial complaints to Chief Herzog back in May 2018, shortly following the winking incident, both Capt. Hensley and Capt. Gutman listed some of Justine Bickley's actions that they saw as inappropriate or that made them uncomfortable. They reiterated and expanded upon these specific complaints in their written reports of retaliation to Township Administrator Burks in February and March of this year, now referring to Ms. Bickley's alleged "misconduct" (Capt. Hensley) and "inappropriate workplace conduct" (Capt. Gutman). While the captains and their counsel repeatedly objected to my questions about these accusations in our investigatory interview—insisting that this was "ancient history" and no longer reflected a current problem, the accusations are not that easily set aside or sanitized. It is true that even if a claim of harassment or inappropriate conduct is found to be baseless, retaliation for making the claim can itself be an illegal act. In this case, the initial allegations about Ms. Bickley remain relevant because they still play a role in the captains' professed "discomfort" in having normal, workplace interactions with her to this day, including the friendly banter and small talk that is part of any normal, functional office dynamic. Considering those claims may also be relevant to (1) determine whether Ms. Bickley in fact did anything wrong or has instead been baselessly smeared, and (2) an assessment of whether the captains have themselves engaged in disparate treatment of a female employee.

Beyond the winking incident (which did not involve him), in our interview Capt. Hensley cited four examples of Ms. Bickley's "inappropriate conduct" that he saw as suggestive or sexual in nature and that made him uncomfortable around her. To summarize:

(1) Capt. Hensley first cites that Ms. Bickley often worked past the normal quitting time of 4:30 p.m. even though, unlike the captains, she is an hourly, overtime-eligible employee. At the end of the normal workday, Capt. Hensley would close his office door, change out of uniform, and usually leave around 4:30 or 4:45 p.m. As he related the story,¹⁷ "Within first few weeks of hire, I

[note cont. from previous page] captains should be treating or interacting with her. West Chester Township does not have different rules or expectations for single vs. married employees, whether male or female, for to do so would be per se illegal.

¹⁷ All quotations in this report are reconstructions or paraphrases taken from my detailed, contemporaneous notes that I typed during the interview, not from a verbatim transcript. At the request of the Township's Law Director, I attempted to record the interviews of both Capt. Hensley and Capt. Gutman using the Township's portable recording device, but in the case of Capt. Hensley's interview, I misunderstood the recording instructions and most of the interview failed to record, to my regret and embarrassment. I never planned to use the recordings in my own work. In fact, I did not record the interviews of any witnesses other than the two captains, because the potential for litigation was the highest with them; the Chief, while also a subject of the investigation, is an at-will employee who can be removed at will without legal recourse. In any contested hearing before the Trustees, actual witnesses would have to testify in any event, and the primary use of the recording at that stage would be for the Township's counsel to double-check the captains' hearing testimony against what they said in their interviews.

Under my terms of engagement with West Chester Township and Frost Brown Todd, my notes are attorney work product that will remain in my possession and control. The notes include my impressions during the interview, upon which I rely in preparing this report and making my legal recommendations to the client.

changed and was leaving, everyone else was gone, I'm walking out, but she is still at her desk. She asked if she could ask question, and she asked, 'Do you think this should be higher priority?'¹⁸ I told her, you probably want to talk with Chief about that." Capt. Hensley said that while the interaction was not on its face improper, the "context was the attire she wore, the comments he had heard the Chief make [about her appearance], and her history"—the history apparently being the baseless rumors regarding her past life before her hire.¹⁹

"Around same time, I was going to leave again, and again everyone else is gone and she's there late. As I'm coming out of my office, as I am going to leave, she is coming to me with a form—'Oh, I was going to give this to you.' I replied, 'Oh, I'll get that to in the morning.' She hung around for a minute . . . a few seconds.' I felt that she was trying to open a door for something more to happen because of her body language and timing. She could have asked someone else; it was not necessary. It made me feel weird. I felt that she's trying to initiate something after hours when everyone is gone."

(2) In a second incident, Capt. Hensley reported that "Sometime after lunch, she [Ms. Bickley] made a run to this building [the Township Administration building in which the interview took place]. This day, she asked if I had a chance to eat lunch. 'I'm running out, I can pick you something up if you want.' It could have been someone being nice, but in context of everything else that happened, I was uncomfortable."

(3) "In August 2018, after I brought my initial concerns and Chief and he had done his response," Capt. Hensley reports this incident. "I was in my office, getting ready to walk out to go to a staff meeting at 3:00 p.m.—a set meeting every Thursday. About 2:58, she came to my door and says—we had never talked with her about my family; we homeschool our kids. She had homeschooled at one point. She came to me and said, 'Hey, do you have any health books at home on sex education,' she was dealing with her son, who is hitting puberty. I was very uncomfortable, plus I was late for my meeting. I offered to let her contact my wife." Capt. Hensley described this as a conversation with "sexual undertones," and this is the only incident with Ms. Bickley that even had any sexual content or nuance.

Now, let's turn to the incidents cited by Capt. Gutman in his complaint or interview:

(1) While he was walking out to meet his wife to pick up soup she was dropping off, Capt. Gutman heard the sound of clicking heels behind him; it was Justine Bickley. "She was practically running after me. I believe it was her intention to make it look like were together walking to my wife." In our interview, he added these details about why he connected Ms. Bickley's walking with something suggestive: "It's just that I had announced that I had to go outside to meet my wife to get this soup, it was for Matt Beiser's mom; his dad had just passed away." Of note, Capt. Gutman's office is directly opposite Ms. Bickley's workstation; she literally sits a few

¹⁸ As a new clerical employee, Ms. Bickley was apparently trying to learn the Chief's prioritization system for documents, and that appears to be why she asked—despite the very different "theory" that Capt. Hensley offered.

¹⁹ Even if he had any real information about Ms. Bickley's past—and he *did not*—are we to believe that Capt. Hensley or Capt. Gutman would pose sexual purity tests for male police recruits? To even pose the question shows how ridiculous, sexist, and irresponsible their comments and actions were.

feet from his office door. When I asked him how he would know what her intentions where, he replied, "Why else would she be running after me?"

(2) The second item that Capt. Gutman cites is that Ms. Bickley had stayed late at work and walked out with him, and he was worried about the "optics" of her walking out with any member of the command team. In our interview, he added "that Courtney was in that position prior to her, and she was out at 4:30 p.m. With Justine, she's there late almost all the time. I say this to put this in context, not making a federal issue. Sometimes people work late; it's just something I brought up." When I then asked, "Are you saying that women employees cannot exit at the same time as you, or Capt. Hensley, or the Chief, or the Assistant Chief?," he replied, "I think if that happens on a regular basis after her shift is over, when that position is over, when she doesn't need to work late."

(3) The third item that Capt. Gutman cited in his 15-page documentation of events was that Ms. Bickley had cut out articles mentioning him, put cookies on his desk, and that during "No Shave November," she had complemented him on his beard, saying "You are the only one who keeps your beard neat and trimmed." When I asked if he found this offensive, he replied, "In and of themselves, no, of course not. Those along with the winking, all collectively, yes." I asked him to explain why, and he replied, "it makes me uncomfortable." I then followed up with this question: "Is it possible, Capt. Gutman, that she is just trying to be nice and maybe warm up what she sees as a frosty relationship—when she doesn't understand why?" He replied that "it never occurred to me why she would think our relationship is frosty." In my interview with Ms. Bickley, she characterized her work relationship with the captains as follows: Capt. Hensley "avoids me," but when asked about Capt. Gutman, her eyes filled with tears and she said, "he's not very nice." I will explain more about Capt. Gutman's hostile behavior toward Ms. Bickley below.

Neither captain had any other examples to offer of Ms. Bickley's so-called "misconduct" or "inappropriate workplace conduct." This is it. So, the question is: How do we evaluate that?

First, I have no reason to doubt that, on some level, the two captains felt uncomfortable around Ms. Bickley. Of course, people may be uncomfortable around co-workers for a variety of reasons: different personalities that don't mesh, one is loud and the other quieter and more introverted, or they simply dislike the person. Or the discomfort can be more problematic, even potentially unlawful, particularly when it involves a senior manager: racial or ethnic differences, religious views or prejudices, or rigid beliefs about employees' sex roles or behavior. In the area of sexual harassment, which these captains and their counsel hint at but never really say, honest, subjective discomfort is not enough to limit what another employee does in the workplace. That discomfort must be reasonable in the eyes of an objective person, not based on over-the-top sensitivity or biased assumptions about how women and men should behave and interact at work. Let's examine these objections in that light.

Starting with the first issue cited, the captains' complaints about Ms. Bickley's dress at work are baseless. They allege that on a few occasions, she wore a very short, black skirt that violated the dress code; they could not cite to the violation violated, but when I read the applicable sections of

the dress code, they noted the provision that requires skirts or dresses to be at a length where it is comfortable to sit. No one else recalls Ms. Bickley wearing a skirt that was too short or other clothes that were not appropriate for an office environment. In the words of the Jan Heimpold, who is now retired but worked for the department for many years and saw Ms. Bickley nearly every day:

There were times where she might have been pushing the dress code a little bit, but I didn't see anything wrong with it. She's a young girl and I'm 68, and I worked at PNC for years with a very conservative dress code. Sometimes she wore things that were casual, and that might be generational. I'd say not something I would wear, but not out of line. There was a girl working at the Township who looked like she was heading to a picnic, and that was not Justine.

Both captains also cite a day when Ms. Bickley wore shorts and a top that might ride up above the shorts when she was reaching overhead for something. But Courtney Lovell confirms that she had told Ms. Bickley to dress casually that day because they would be moving things around for an event they were setting up for, so she wore shorts and a casual top.

In any event, the captains do not supervise Justine Bickley, and it is simply not their job to police how she dresses. Ms. Bickley reports to Courtney Lovell and Chief Herzog, neither of whom had any problem with how she dressed. Capt. Gutman said that the Assistant Chief had commented on the black skirt, saying to the Chief one day, "Have you see the skirt today? It's pretty short." Lt. Col. Rebholz does not recall seeing that outfit or saying that to Col. Herzog, and in his account, "The dress or the skirt that I thought it was was a longer dress that had a slit in the back, and I don't recall ever seeing it again. If you go into private sector, this would not stand out—attorneys have worn that in court, and I see it in a bank. What she was wearing was stuff we did not typically see." Perhaps that is the issue: that these captains were used to working in an overwhelmingly male environment, where most civilian women employees wore khaki slacks and polo shirts, and Ms. Bickley, who had worked in a law firm and a bank, came in "dressed to the nines," in the words of one witness. Both Chief Herzog and Assistant Chief Rebholz recall Capt. Hensley saying that "women have no business wearing heels into the office." He denies saying this, but Joan Tumblison Germann distinctly remembers a meeting with Capt. Hensley where he told her that "woman have no business wearing heels at work"—a vivid memory for her because at that very moment, Ms. Germann was wearing four-inch heels, as is common for many women lawyers. I credit Ms. Germann's account; she no longer works for the Township and has no stake in this dispute or reason to manufacture this specific and memorable exchange. Jamie Hensley appears to have a quite antiquated and even discriminatory idea of what women should wear in a professional business environment, for the upscale outfits that people describe Ms. Bickley as wearing would be unremarkable in any law office, courtroom, or dressier, business office.

Beyond what seem to be outmoded views, why are these two captains so obsessively interested in what Justine Bickley wears to work? Both grew angry (along with their attorney) when I asked if they ever noticed what male civilian employees wore to work. Slacks that might be a tad tight? Polo shirts that could reveal an employee's muscular physique? Male employees who might wear shorts and a sleeveless tank top shirt when working out in the exercise room, to which women

employees have access as well? Or (as is obvious), do the captains only worry about what women wear at work—or more specifically, one woman—Justine Bickley—who happens to be a younger, attractive female? Casting women employees into dress codes where they must “avoid being provocative” to their male coworkers is both inappropriate and potentially discriminatory. The word “provocative” is itself sexist and offensive in this context, for men—and only men—are responsible for their behavior at work, not what a woman chooses to wear. Further, these expectations do not reflect the policy of West Chester Township or its Police Department. The captains have no right to impose their own, more restrictive vision on the women who work there.

None of the other behavior cited by either captain has any sexual content whatsoever, with the exception of the Ms. Bickley’s question about sex education resources for her son, who was then approaching puberty. I will cover that in a moment, but the other instances amount to Ms. Bickley doing her job, asking questions, or trying to be thoughtful or kind. Yet, the captains read into her actions some kind of seductive intent. Beyond the sheer arrogance of this leap—do they just assume that she would find them attractive?—this represents offensive distortions of her behavior that leave her in a no-win position. If she tries to be kind, she is “coming on to them”; if she asks a question, well, then “she must want something else.”

As I have said previously, Ms. Bickley had no idea before or during our interview that reactions to her presence in the office somehow set off the dysfunctional conflict within the command staff. I asked her about her interactions with Capt. Gutman, and she cited two, disturbing incidents that occurred far more recently, thus putting the lie to the repeated statement that “we have no problems with Ms. Bickley now.”

In the first instance, she recounted the following:

When I was first hired, there was no interaction between us [referring to Capt. Gutman], but he’d go down and talk to Jan [Heimpold] for 20 minutes. I didn’t really understand why. We went to the team building with Dr. Cohen [in late 2019 and early 2020], and he talked a lot about “What can you do differently?” I told Dr. Cohen that I could try to interact more with both captains. I heard Capt. Gutman say that he was taking off work to go to his son’s soccer tournament. I said something about it after he came back, but his response seemed unhappy. About a month ago, he had an abscess tooth; he was out a whole week. The Chief said that he was really sick and might have to have a root canal. His office is right across from me. Part of my job is knowing where people are because people come looking for him. When he came back, I asked, “How are you feeling? Did you have to have a root canal?” He yelled at me, “Who told you?!” in a very harsh tone. I didn’t say anything in response.

While Capt. Gutman did not recall the conversation about the soccer tournament and denied being harsh in the root-canal conversation, Courtney Lovell heard them both and said that Capt. Gutman snapped at Ms. Bickley both times. Ms. Bickley was trying to be kind and make pleasant, everyday office conversation—exactly what she thought Dr. Cohen was asking her to do—and Capt. Gutman snapped at her for it. That behavior is neither “polite” nor “professional,” as both captains insist

they have been. It was hostile and alarming, and Ms. Bickley took it just that way, as any reasonable observer would have.

Making this more alarming and disturbing is a fact that neither captain nor anyone else in West Chester Township knew until my interviews: Justine Bickley [REDACTED]

[REDACTED]. When Lisa Brown and Tonya Charles met with Ms. Bickley in mid-June to tell her that public records were being released (including the captains' complaints that named her), she became very distraught and [REDACTED] Ms. Bickley literally [REDACTED]. This is the reason her name has been redacted from the released records,²⁰ and as noted earlier, I have assigned her a pseudonym in this report. With that painful history, imagine Ms. Bickley's reaction when this happens: She tries to be kind and to build a warmer relationship at work with the captains—just as the organizational psychologist with whom they were working had asked her to do—and instead Capt. Gutman turns and snaps angrily at her, seemingly out of nowhere. Capt. Gutman did not know her background; I get that. His actions were nonetheless at best thoughtless and at worst cruel—to someone who had done nothing to deserve such a tone.

What is the real issue here? In their written complaints, the captains even object to Justine Bickley's *very presence* in the building when it is largely empty late in the day. What are they asking—that Ms. Bickley (but no male employee) be forced to leave work when there is no one else there to “chaperone” them or vouch that nothing untoward is happening? Does Ms. Bickley have to time her presence in the office or when she walks down a hallway to avoid the appearance that she might be tempting or pursuing a married man? Or even be seen in his presence? That is the logical end point of the captains' complaints. Whatever the source of their “discomfort,” however, neither Capt. Hensley nor Capt. Gutman has a right to a work environment free of young or attractive female co-workers who might create “bad optics” or make their wives feel threatened. To limit Justine Bickley's work hours or work habits on that basis would be discriminatory and flatly illegal under Title VII's prohibition of discrimination because of sex, which has been black-letter statutory law since 1965.

Let's return, finally, to Capt. Hensley's claim that when Ms. Bickley asked whether he or his wife knew of sex-education materials for her adolescent boy, the conversation had “sexual overtones.” It is widely known in the Police Department that Capt. Hensley and his wife have home-schooled

²⁰ When I briefed the captains' attorney Elizabeth Tuck to share my conclusions in the investigation, I informed her of this personal history and our concerns for Ms. Bickley's safety, and Mr. Crain advised her that the Township would hold her clients responsible if someone leaked her actual name. Ms. Tuck was genuinely concerned about the risk to Ms. Bickley as well. She stressed, with evident sincerity, that her clients never wanted this information to become public. But with due respect, what did they think would happen when they wrote 22- and 15-page complaint letters to the Township Administrator detailing all sorts of allegations of “inappropriate conduct,” which, however baseless, would by definition now become public record? If the Township chooses to release my report, it will likely reflect a determination that those accusations, now in the public record even though many are reckless or outright false, cannot go uncorrected.

their children, including a number of foster children.²¹ True, Ms. Bickley's question might be unusual, not common office talk, but the subject matter is hardly titillating or shocking. In any healthy office, people talk about their families—their spouses or partners, their children, and the upbringing of those children. That kind of day-to-day conversation helps people see each other as something more than their jobs and fills in the broader picture of who each person is, and why (and for whom) that person works so hard. Ms. Bickley was at the time a single mother raising an early-adolescent boy on her own. She asked if Capt. Hensley or his wife knew of any resources that could help her through awkward conversations with a boy going through puberty. Capt. Hensley suggested that she could contact his wife—the end of a one-time conversation with no follow-up.

To claim that Ms. Bickley's query has "sexual overtones" is so over-the-top exaggerated as to be absurd on its face. It distorts an innocent inquiry about resources on educating children into something "dirty," which is itself offensive. As the late Justice Scalia said in his opinion for the Supreme Court in *Oncale v. Sundowner Offshore Services, Inc.*, 523 U.S. 75 (1998), Title VII is not a "general civility code for the American workplace"—and it is ludicrous for Capt. Hensley to cite that conversation as "evidence" that Ms. Bickley had a flirtatious purpose in asking that question. All he had to say was, "Actually, conversations like this make me uncomfortable," but instead he said nothing until it was time to add this to his list of Ms. Bickley's "offenses."

In another example of Capt. Hensley's inappropriate sense of how men and women should work together, Assistant Chief Rebholz told me that Capt. Hensley had allowed a male field training officer (FTO) to decline to train a new, female police recruit because the FTO's wife would be uncomfortable with him doing so. Capt. Hensley denies this, but Lt. Col. Rebholz's recollection is quite specific. I repeatedly asked Capt. Hensley whether he—as one of the Police Department's most senior officials—understood that gender can never be a factor in such an assignment, and that it would be illegal to do so. He kept refusing to answer the question, saying instead that it would "be a problem," and only directly answered the question after a break to consult with his lawyer. Capt. Hensley's assumptions about how women should be assigned or behave at work are out of date and simply wrong. He may not be the kind of sexist who says that "woman have no business in police work," but outmoded ideas like this could nonetheless create a discriminatory environment for women who work in the West Chester Police Department.

The irony, then—given the captains' complaints—is that if there were any risk of discrimination through inappropriate behavior here, it is that two highly-ranked captains have brought accusations tainted with sexist assumptions against a female employee who has done nothing wrong, and in doing so, claim some right to limit her work activities because of their irrational "discomfort." Fortunately, the Township headed this off at the pass by making clear, through Chief Herzog and Assistant Chief Rebholz, that no such differential treatment and expectations will be permitted.

While the captains' counsel repeated insisted that all this is irrelevant, "ancient history," that really is not true, because that history has present consequences: they continue to treat her differently from other employees in the Chief's office area, in a frozen and forced way, with minimal, artificial contact. For example, they were told that they must give Ms. Bickley the normal greetings expected in any civil workplace, so now they announce, loudly enough for all to hear, "Good morning,

²¹ Capt. Hensley's commitment to protecting and raising foster children is truly commendable, part of a broader picture of who he is.

Justine!” and “Good night, Justine!”, but they otherwise largely ignore her unless they need to ask her something relating to a specific work task. They are reluctant even to use her name. It is true, as they have been told, that the captains are not required to bare their souls or initiate personal discussions with her. They don’t even have to like Ms. Bickley, though they must conduct themselves so that no one else can tell that.

In their written complaints and four days of interviews, I have heard a great deal from former Capt. Hensley and Capt. Gutman about how badly they have been treated, how they just “tried to do the right thing” but were punished for it. They have truly staked out the moral high ground, at least in their own minds—they are “fighting for the right.” Capt. Hensley struck that same self-righteous posture of victimhood in his resignation letter, with evident self-pity but no reflection on his own actions. No one, not even Chief Herzog, takes any joy in this outcome; it is deeply regrettable that a long, otherwise-successful law enforcement career ended that way. But the reality of this story is quite different from the captains’ heroic self-image. For two years, these two captains have done their best to make Justine Bickley feel unwelcome and an outsider in her own workplace, for no reason other than their own insecurities and fevered imaginings that she “wanted something more.” The stubborn thing about facts is that they are true whether or not one wants to see it, and the fact is that they are *not* the victims here. I have no reason to doubt that the captains are good men overall, who love their families and care about doing good work. But good people can sometimes do bad things, and these captains have done a grave moral wrong to a woman who did nothing to deserve it—and who was particularly vulnerable to that kind of hostility.

The captains said that they have repeatedly asked both Chief Herzog and Lt. Col. Rebholz to tell them exactly what more is required in their interactions with Ms. Bickley. This was discussed both in their most recent evaluations and in the January 28 meeting, at which time both insisted that they “won’t have personal conversations with her.”

It is time to answer that question as plainly as possible.

What is needed is that they conform at all times to a firm and unvarying standard: Each captain must treat Ms. Bickley like a professional colleague, in a pleasant, professional, cordial, and appropriately kind manner, and specifically they must treat her in a way that no objective, outside observer can tell *any* difference in how they treat her compared to other employees in the Chief’s front office area. No one is required to initiate personal conversations, but the cold freeze must stop along with the game-playing and phony, passive-aggressive parodies of normal office interactions. This is expected because the captains are senior, highly paid managers, and their actions not only reflect on West Chester Township but can trigger liability if they treat employees in a disparate way. With that expectation comes this blunt warning: If a captain cannot do that, if he cannot get past his resentment of and “discomfort” about Justine Bickley working there, then he has no place in the West Chester Police Department. Work is not *Survivor* and police captains do not get “to vote people off the island.” The Township Trustees have made clear that they will not have Township employees treated in this way, and the Township will not incur the resulting risk of liability if the behavior were to continue. One captain is now gone, but if this is not the work environment that the remaining captain wants to work in, then he also needs to resign or face escalating discipline that will result in his termination in relatively short order, because this situation is well beyond coaching or low-grade warnings. The bottom line is that Capt. Gutman’s campaign

of resistance to Ms. Bickley's presence must end now. My specific recommendations for a performance action plan for Capt. Gutman²² are set out in Part IV.F. of this report.

B. Has either Chief Herzog or Assistant Chief Rebholz retaliated against Capt. Hensley or Capt. Gutman for making their allegations about what they see as inappropriate conduct?

The centerpiece of Capt. Hensley's and Capt. Gutman's case set forth in their lengthy written submittals to Township Administrator Larry Burks is that Police Chief Joel Herzog and to a lesser extent Assistant Chief Brian Rebholz have repeatedly retaliated against them for raising their complaints about Justine Bickley. Their attorney Elizabeth S. Tuck says in her letter of February 24, 2020, to Administrator Burks that this retaliation penalizes the two captains for protected activity under federal and state law. As I stated earlier in this report, even if the underlying allegations are baseless, as I have found, retaliation for making the complaints can still be illegal under federal and state law, so it is to that issue we now turn.

Essentially, the two captains complain that Chief Herzog and Assistant Chief Rebholz have micromanaged them, excluded them from duties and responsibilities that they were once part of, and have given instructions and assignments to their subordinates without their knowledge. They basically complain that they have been shut out of what their jobs used to be like after complaining about Justine Bickley's behavior.

In my interviews with Capt. Hensley and Capt. Gutman, we reviewed the details of their allegations of retaliation until they could offer no more examples. I then reviewed these examples in my interview with Chief Herzog and a follow-up interview with Lt. Col. Rebholz. I find no basis for finding that either the Chief or the Assistant Chief has retaliated against either captain for engaging in protected activity, i.e., complaining about what they saw as inappropriate behavior by Ms. Bickley. As a starting point, neither captain alleges any action that affected his pay, his rank, his continued employment, or other impact on his career with West Chester Police Department. The sole exception was the internal investigation of Capt. Hensley for dishonesty, which I will address separately below, though Capt. Hensley's resignation has rendered that issue moot.

1. The January 28 HR Meeting and Performance Improvement Plan.

Capt. Hensley claimed that the January 28 meeting with the Chief, Assistant Chief, and Human Resources Manager Tonya Charles and the statement of expectations that Ms. Charles gave to him at that meeting were themselves acts of retaliation. In fact, Capt. Hensley cast that meeting in near-apocalyptic terms, saying that the performance improvement plan (PIP) "will be horribly detrimental to me—my file is public record and it can affect my job here and any future job. A PIP is not good; it generally means that someone is looking to get rid of you. They are now going to destroy my career because I talked to my supervisor."

Anyone can understand that the meeting was an unwelcome surprise and that Capt. Hensley was frustrated and upset. No one likes being told in a written memorandum that he is expected to

²² Capt. Hensley has, of course, resigned after learning what would be in my report, leaving Capt. Gutman as the only remaining captain whose conduct is at issue. Otherwise, the plan would have applied to both captains.

improve his performance. While neither welcome nor positive from his standpoint, however, the memo that Ms. Charles issued to him is not disciplinary in nature and will not have the devastating career consequences that he claims. The Police Chief has the right and the responsibility to direct his employees and specify what he expects from their behavior, including improvements. That is even truer when a manager treats a subordinate employee in an unwarranted manner that can create a risk of liability for the Township. Even in that light, the language in Ms. Charles's letter is not that harsh, and her memorandum setting out the expectations is not itself disciplinary in nature.

I would have preferred that Chief Herzog address the issue of Capt. Hensley not telling him that he would be attending the Men of Honor event in November more promptly than waiting until the HR meeting and the performance improvement plan. It would have been better for the Chief to speak directly and informally with Capt. Hensley shortly after he learned through Cincinnati Police Chief Eliot Isaac that Capt. Hensley was there, rather than including it in the memorandum regarding expectations. To Chief Herzog, however, Capt. Hensley's failure to tell him about the dinner was not only embarrassing but symptomatic of a collapse in their communications. As Chief Herzog noted in our interview, he had lunch with Capt. Hensley the Friday before: "Why couldn't he have just said something about going to a black-tie dinner with the president of our Citizen Police Academy Alumni Association?" The Chief saw Capt. Hensley's attendance at the dinner as a positive thing; he just did not want to be embarrassed by being "the last to know."

I also note that the Chief probably overreacted to the controversy around [REDACTED] post on "cronyism." The captains' wives posted far more offensive things in 2018 around the time of the winking incident, at least some of which plainly targeted Justine Bickley without naming her.²³ All that said, there is some merit to Capt. Hensley's statement that his wife's post could not have created the "disruption" in the department that Chief Herzog cited unless it triggered underlying feelings that were already there about the Chief's relationship with Sgt. Paul Brent Lovell (usually called Brent Lovell). At least some police officers feel that the Chief gives too much favoritism and direct access to Sgt. Lovell because of their friendship. Sgt. Lovell has at times called attention to his connection with Chief Herzog to the detriment of them both—referring to him as "Joel" in conversations with officers and re-tweeting most of the Chief's Twitter posts at one point. There is no formal policy in the West Chester Police Department banning fraternization between the Police Chief and a sergeant four command levels below him, but common sense indicates that it is a problem and potentially damaging if officers see that the Chief gives a sergeant a favorable edge or direct access without regard to the lieutenants, captains, and assistant chief between them. Chief Herzog should be cautioned to avoid such perceptions of favoritism through his actions. Assistant Chief Herzog and Lt. Mike Quinn have already verbally warned Sgt. Lovell not to refer to the Chief as "Joel" in front of subordinate officers, and that is a good start.

2. The Internal Investigation of Capt. Hensley.

On February 24, 2020, attorney Elizabeth Tuck sent a letter to Township Administrator Larry Burks, informing the Township that she represented both captains. In her letter setting out the

²³ Perhaps the most obnoxious aspect of "vagueposting" is that passive-aggressive nature. In effect, the person writing the post is playing a game of "Guess whom I am talking about? I don't have the courage to say it plainly, but I'll drop hints and see if you can figure it out."

claims of retaliation, Ms. Tuck stated that "Colonel Herzog's retaliation has now escalated to the point of a sham investigation designed solely to discredit Commander Hensley and destroy his career." She was referring to the then-pending internal investigation of whether Capt. Hensley lied to Chief Herzog and Assistant Chief Rebholz in the January 28 "HR meeting" regarding (1) whether he knew anything about his wife's Facebook post on the definition of "cronyism," or (2) whether Capt. Hensley lied the next day when he said that he had deleted his recording of the HR meeting, as he first stated. The investigation was not retaliatory, however, and it certainly was *not* "trumped-up" or "ridiculous," as both Capt. Hensley and Lisa Tuck strenuously claim.

In the wake of the January 28 and 29 meetings with Capt. Hensley, Chief Herzog and Assistant Chief Rebholz describe themselves as being in a state of shock: "Did he just lie to us?" The first shock came right after they had met with Capt. Hensley, when they met with Capt. Gutman because they believed he would hear about the meeting in any event.²⁴ Capt. Hensley had said that "I am not aware of when she posted or anything about it," so they were stunned to hear that Capt. Hensley had already discussed the post with Capt. Gutman a few days earlier after Lt. Mike Quinn first approached Capt. Hensley to ask him if the post had anything to do with work. The Chief was irritated that Capt. Gutman had gone to Capt. Hensley to discuss this rather than bringing the issue to the Chief's attention, but most of all, both the Chief and Assistant Chief were shocked and deeply disturbed by what they felt was an outright lie.

Of course, this grew worse the next day when Chief Herzog called Capt. Hensley back in and told him that he would need a copy of the recording of the January 28 meeting to review precisely what was said. As described in the factual summary at p. 7, Capt. Hensley told the Chief that he had deleted it, and only when the Chief told him that he would need his mobile phone so that the in-house expert could try to retrieve the recording did Capt. Hensley tell him he would get the Chief a copy, because he had saved it elsewhere. In the eyes of the Chief and Assistant Chief, Capt. Hensley's initial response was a lie as well, and on February 11, 2020, Chief Herzog wrote a memorandum to Courtney Lovell, asking her to refer his request for an internal investigation to Lt. Paul Haering, the head of the Police Department's Integrity and Development (I&D) section, known in most police departments as the "internal affairs section."

Lt. Haering launched his investigation, assisted by Sgt. Mark Weingartner, who is also assigned to I&D. They interviewed several witnesses, including two sessions with Capt. Hensley and one with Capt. Gutman. Because both captains complained about the internal investigation and how they were treated in their interviews, I reviewed the recordings of their interviews with I&D. Lt. Haering and Sgt. Weingartner conducted those interviews with impeccable professionalism. Capt. Gutman complained about several aspects of his interview in his retaliation complaint letter of March 11, 2020, calling the "entire line of questioning . . . inappropriate." His complaint on that score is baseless; it was not his investigation and he did not even know exactly what was being investigated, so he had no basis to judge "the line of questioning." More absurdly, he complains that "I was not served with administrative charges or read a Garrity warning." Of course, he was not served with any "charges"—the investigation was not about him—and he implies that a *Garrity* warning is

²⁴ It is indicative of the dysfunction that the Chief and Assistant Chief have no trust that they can discuss one captain's performance issues without the other captain being dragged into the drama. Normally, I would be concerned that the two senior commanders immediately involved Capt. Gutman, but in this case, I conclude that they correctly read the situation: that Capt. Hensley would quickly go to Capt. Gutman in any event.

required whenever a police officer is questioned in an internal investigation, when this is flatly untrue under either law or policy. When Capt. Hensley asked for a second session with the investigatory team, he drifted far from the subject of the investigation, unloading his long list of retaliation complaints on his rather startled colleagues. This was the first time that Lt. Haering or Sgt. Weingartner had heard anything about the dysfunction and conflict among the command team, or as Lt. Haering called it, the "back story."

The Chief had abundant cause to request this investigation; it is no "sham." On its face, there was substantial cause to believe that Capt. Hensley had lied to him twice in two days about an important, work-related issue. Police officers cannot lie in the course of duty, and the career consequences of doing so are devastating. If a police department finds that a police officer has lied, the US Supreme Court has ruled that prosecutors must disclose that fact to the defendant in any criminal case in which that officer will testify, because the record of a witness's past dishonesty is potentially exculpatory. See, *Brady v. Maryland*, 373 U.S. 83 (1963), and *Giglio v. United States*, 405 U.S. 150 (1972). When a police officer must be placed on what is commonly called a "*Brady-Giglio* list," that officer is functionally useless, at least if he or she would ever be called to testify in court. For that reason, I have often heard police officers use the phrase "you lie, you die" during internal investigations in law-enforcement agencies. Chief Herzog had a duty to determine if one of his senior commanders had lied to him and, thus, might have to be placed on the *Brady-Giglio* list maintained by the West Chester Police Department or the local prosecutor's office.

Lt. Haering had not finally completed and submitted his report on the internal investigation. The normal process is for him to submit the report to the Police Chief for approval and a determination whether disciplinary charges or other action was warranted. The Assistant Township Administrator and Law Director had asked the Chief to direct Lt. Haering to stay the completion of his report, and he did so. I had verbally briefed the Board of Trustees on my conclusions in my investigation on June 10, 2020, and at that time I recommended (and planned to recommend in this report) that the stay be lifted so that Lt. Haering could complete his report and submit it to Assistant Administrator Lisa Brown, instead of to Chief Herzog. Capt. Hensley's sudden resignation on June 23 eliminates the need for any final determination on Capt. Hensley's alleged dishonesty.

However we cut it, the internal investigation was not retaliation but an essential step in response to substantial evidence that a senior commander lied to his superiors. To ignore that evidence and bury that issue would be an irresponsible and potentially unethical oversight.

3. Claims of Retaliation Through Changed Procedures, Policies, and Exclusion from Normal Ways of Doing Business.

In their written complaints submitted in February and March, both Capt. Hensley and Capt. Gutman gave many examples of why they believe that Chief Herzog and Lt. Col. Rebholz retaliated against them in their day-to-day work as police captains at West Chester. Both captains claim that Chief Herzog and Assistant Chief Rebholz have micromanaged them, excluded them from duties and responsibilities that they were once part of, and often did an end-run around them to give instructions and assignments to their subordinates without their knowledge. They argued that when do not even know what people under them are doing, this undermines their credibility and effectiveness in managing their respective bureaus.

Capt. Hensley gave a long list of examples of this alleged retaliation, both in his 22-page complaint and in our interview, stating mainly that he and Capt. Gutman had been excluded from meetings, policy changes, hiring processes, and other decisions in which they had routinely taken part before. Capt. Gutman offered some additional examples of his own. In our interviews, each captain was asked to list every example of retaliation until he had no more to offer, and to be sure, I asked again, "Are there any other issues?" I will address each claim in turn below, starting with Capt. Hensley's examples:

a. Change to Discriminatory Harassment Policy.

I alluded to this issue earlier in this report. After Capt. Hensley initially shared his concerns about Justine Bickley after the winking incident, he learned that the Police Department had modified the discriminatory harassment policy to eliminate the requirement that the complainant be notified of the disposition of the complaint. Capt. Hensley said that the captains have been directly involved in any change in Police Department policy before this, and that all four of the sworn command staff have typically dated and initialed the changes before they are filed with the I&D section. Capt. Hensley stated that in this case, however, the meetings to discuss the policy change only involved Lt. Col. Rebholz, the Chief, and Courtney Lovell, who decided to eliminate the requirement to notify the complainant about what action was taken, and this change was made before the captains were told that their complaint about Ms. Bickley was resolved.

As I noted earlier, the Chief stated that this change was recommended by Joan Tumblison, the lawyer who then served as the Township's Human Resources Manager. She felt that discrimination complainants in general have no right to know the specifics of what action was taken after an investigation, particularly any discipline that might have been issued—the complainant needs only to be advised that the investigation was concluded, as happened here. The Chief saw no need to have the captains initial the change, and in this case, where they *are* the complainants, I see his point. As I indicated earlier, I think it would have been better practice to notify the captains specifically that their complaints of inappropriate behavior and "harassment" had been found to be without merit, but that does not make the decision to change the policy retaliatory.

b. Growing Distance in Workplace Interactions.

Capt. Hensley stated that both the Chief and Assistant Chief began distancing themselves from him and talked to him less after he expressed concerns about Ms. Bickley's conduct. Occasionally on Fridays, the command staff still goes out to lunch, but he said that gradually over time, the Chief rarely stopped by his office to chat, instead starting his work day in Courtney Lovell's office, then usually walking by Capt. Hensley's office without saying a word.

There is irony in this complaint, and I do not mean that in a sarcastic way. The central problem in the command staff is a near-total breakdown in communication beyond the bare minimum necessary to get the work done. This is, of course, exactly what the two captains have done to Justine Bickley—"I will not have personal conversations with her"—and they then complain that

the Chief and Assistant Chief have largely frozen them out of that same kind of office camaraderie that is the “social lubrication” in what are often demanding and stressful jobs.

The Chief agrees that the command staff had a practice of going to lunch every Friday, primarily the Chief, Assistant Chief, and the two captains. That practice has existed for years; in the early 2000s, the four people in those positions would usually go to lunch daily. Occasionally, the Chief would ask Ms. Bickley if she wanted to come, but she never accepted. Courtney Lovell came on rare occasion, but lunch for those four on Friday was standard. That did not stop until the conflict escalated with the 2018 complaints. The Chief admitted that he felt attacked and even betrayed, and he wanted to stop the lunches in July 2019, but Joan Germann said that he could not do that. The Chief finally stopped the regular lunches around the time that Larry Burks received the complaint letters and the letter from Ms. Tuck, and with the COVID-19 pandemic not long after that, having lunch in restaurants became impossible in any event.

Capt. Hensley is no longer employed but Capt. Gutman still is. When a new captain is selected on an interim or permanent basis, it would be a wise step for the Chief and Assistant Chief to resume the weekly lunches or at least to offer to do so, though I see no point in compelling attendance if a captain is not willing. But stopping off-site lunches in the face of a dysfunctional work climate is not retaliation for protected activity. First, no one has a “right” to go out to lunch with his boss; from a legal standpoint, this is not a term or condition of employment. Second, Capt. Herzog is a human being—when he is accused (as he has been, by these captains) of “corrupt” and “improper” behavior, let alone baseless insinuations that he had some kind of relationship with one of his employees, it is quite a stretch to expect him to take his accusers to lunch every Friday as if nothing has happened. That said, the dynamic will not improve in the wake of this investigation and Jamie Hensley’s resignation without everyone committing to work on changing the relationship, including the Chief, the Assistant Chief, and Capt. Gutman.

Back to the office itself, Chief Herzog told me that he often arrives in the office in the morning before the captains, and if Courtney Lovell is there, he might stop and talk with her. The Chief says that he works more with Ms. Lovell on day-to-day tasks than the captains in any event. He said that he would often stop at Jan Heimpold’s desk to chat when she worked there. When heading back to his office, he would usually find the captains in their offices and wish them a good morning. He said that he would at times stop to have conversations with them, though he seldom went in to sit in their offices. The Chief said that he chatted with Capt. Hensley, for example, about a new quad bike that he had purchased, but that he found Capt. Hensley to be a very private person who did not talk much about his family—not a problem, but a fact. After he filed his complaint, he barely talked to the Chief at all.

The Chief owned up to the dynamic, saying that “I don’t go in and chit chat because we don’t have this relationship anymore.” With Capt. Hensley in particular, the Chief saw him as becoming almost reclusive, and he told me that “people started asking if Jamie was OK; he had lost weight” and did not look well. As the Chief told me:

Things are not chummy, and I'll take some blame, but they share it. They fail to recognize any part of their behavior in this, and they have no ownership. Dr. Cohen resonated with me because he said, "When someone annoys you, then every little thing annoys you more," and I saw that I was part of the problem. But Dr. Cohen gained nothing from them—zero effort and zero change. They take things I have told them to do and they make it silly. For example, they used to walk in in the morning and walk right past [Justine Bickley] without acknowledging her. I told them, "You will say 'good morning,'" and now they go through it in a rote way. When they leave and are out of the office, Justine's desk is the hub—I told them to let her know when you leave the building. Capt. Gutman said, "I carry two phones and a radio, and I will not tell her when I'm leaving." I told him you will tell her. And now they take it to an extreme, loudly saying, "Justine, I'm going out to get my car washed and I'll be back in fifteen minutes." It's that refusal to communicate with her; it's just awkward as hell.

As noted above, the irony is that the captains complain that the Chief does not talk with them in the way he used to, but this is exactly what they have done to Justine Bickley: freezing her out of the day-to-day, interpersonal talk that takes place in any office. No one is required to bare his or her soul or talk about intensely personal issues at work, but no healthy office limits interactions to the bare minimum of business-only conversations. To do so would be cold, sterile, and ultimately drive people away; even at work, people are social animals, not automatons, and they bring their whole selves into work, including their outside interests, what they do in their free time, stories about their families and children, and a variety of other aspects of their lives. That loss of social interaction is a big part of what has made the quarantining experience of the coronavirus pandemic so challenging for many of us. Yet, Capt. Hensley and Capt. Gutman effectively quarantined themselves long before that when it comes to Justine Bickley, repeatedly insisting that they will *not* have exactly these kinds of friendly and innocuous conversations with her. Even worse, as I shared earlier at p. 25, when she did try to have a friendly conversation of that kind, stretching herself to improve a cold, interpersonal relationship, Capt. Gutman sharply and cruelly snapped at her and shut her down. Worse still, the captains justify their campaign to wall off and isolate Justine Bickley, in a workplace where the command staff members work within a few dozen feet of each other,²⁵ with baseless allegations that Ms. Bickley had engaged in some kind of "misconduct" that made them "uncomfortable," claims that fail the "reasonable person" test so badly as to be almost laughable were they not so devastating for her.²⁶ Yet, these same captains then complain that the Chief no longer takes them to lunch or talks with them the way that he used to—after Capt. Hensley accused him of "unprofessional, inappropriate, and possibly unlawful conduct," "corrupt conduct," and

²⁵ As I stated earlier, Capt. Gutman's office is directly across from Ms. Bickley's desk and work area, literally a few feet away in each other's direct line-of-sight.

²⁶ The Township redacted Ms. Bickley's actual name from the public records that were released, and I have used a pseudonym in this report. But people working at the West Chester Police Department and West Chester Township know that who it is, along with her family and some close friends. It is humiliating, something she did nothing to deserve.

“further improper actions by him that will be exposed.”²⁷ See, Jamie Hensley letter of February 24, 2020, pp. 21-22.

c. Hiring Processes and Decisions.

Both captains claimed that they have been excluded from the hiring process when they once played a key and almost constant role. In the words of Capt. Hensley:

Prior to this happening, we were heavily involved in reviewing applications for any position and in oral review boards after the fitness test. The Assistant Chief and two captains were on every single review board for police officers and on many for civilians, especially in my bureau, and the Chief would fill the other slots. After August 2018, we were excluded from many review boards, and we’re in maybe one or two out of five now. We would often be in final interviews when Chief was making the decision, but not since this happened. Part is also being informed about how the process is going—the Chief would talk to us, and when employees ask “when’s the help coming?”, we could tell them something, but now we’re not being kept up. It creates dysfunction in the department and makes us look dysfunctional. The Chief makes final decision on whom to hire, but we used to be part of the discussion and of the process. Now just meet the new hire when he or she shows up or is brought around.

The Chief had a quite different account. For a start, he said that he did not believe that the captains had ever taken part in a final interview. He also said that review boards had been made up of the Assistant Chief, a lieutenant or sergeant, senior and junior patrol officers, sometimes a civilian, and that he strove to ensure that there was at least one female panel member. At some point, this arrangement was getting harder to make work because of scheduling issues. Then for a time, the panels comprised the Chief, the Assistant Chief, and the two captains only, but the Chief said that other officers wanted to participate, so he decided to go back to the model of a panel with one member of the command staff and other officers, or a captain together with other officers on the panel. The Chief said that he would often ask Courtney Lovell or Michelle Berding to participate, both because of their positions and to ensure that the interview panel was not all male, but he denied that the captains were ever excluded by choice. The Chief notes that it is often important to Capt. Gutman to feel that “he is in charge”—an observation echoed by some others—but that no one was taken “out of the loop.” The Chief also said that he explained to the captains why these changes were made.

As far as polygraph examinations are concerned, the Chief said that it is true that Capt. Gutman wanted to review all of them as part of the background checks, and the Chief said that Capt. Gutman would often “kick them back” after doing so. The Chief decided that “we didn’t need to have all

²⁷ Spoiler alert: In an investigatory interview that lasted two days, Capt. Hensley could not give any examples of “further improper actions by him that will be exposed” beyond what he had already provided. Not even one. In short, this was an empty threat. Others might call it potentially defamatory as well.

these eyes on it, so now, it just comes to me.” Further, the Chief said that historically the polygraph examination reports only came to the Chief, though he might ask Lt. Col. Rebholz or Capt. Gutman to review some cases. The Chief did not feel comfortable widely sharing polygraph results because of the sensitivity of some of the information (e.g., someone disclosing that he had been molested as a child or that she had been the victim of a crime). Courtney Lovell keeps the records, but they are not open for review, as is also true with the psychological assessments. The Chief said that he asked the captains’ views about these changes at the end of 2018. For similar reasons, the overall background checks for both Police Department hires and for the whole Township are usually done by an officer or detective, and they go straight to Courtney Lovell, and that has been true since August 2018.

Neither captain appears to like or agree with these changes, but the Board of Trustees has vested the management of the Police Department in the Police Chief, not the captains. Anyone who works in an organization, large or small, will at times disagree with decisions from the top on how things are to be done. That is the reality of any workplace—unless one is self-employed—and if every decision with which a subordinate disagrees becomes evidence of “retaliation,” lawyers and courts will be busy indeed.

d. Training Plans.

The captains claim that they used to be an integral part of developing training plans for the West Chester Police Department. The process would generally take place in the fall of the preceding year, and the captains would join in meetings with the Integrity and Development section to plan training for the coming year. Capt. Hensley said that in 2018, he was part of that process, but not so in 2019, and he complained that “then training plan came out and we weren’t even part of process, and I was training coordinator for six and a half years.”

The Chief responded that “I have no recollection that he was not involved, and if he was not, it was not an exclusion.” The Chief did not know if the captains were involved in plans for training in 2017. The Chief noted that Capt. Hensley and Capt. Gutman were both involved in a meeting with the Chief set for the week following my interview to figure out how to salvage and modify the training plans for 2020 in light of the current pandemic. I found no evidence of any “exclusion” that is retaliatory. While involving the captains of the two bureaus that make up most of the department seems wise when planning for training, the Chief as department head must make the call on how best to decide what training the Police Department and its officers need.

e. Budget Preparation.

Both captains complained about what they saw as a recent exclusion from the budget planning process. The two captains are, they stressed, responsible for the management and oversight of their respective bureaus, which make up most of the Police Department. The Support Bureau in particular, for which Capt. Hensley was responsible at the time of our interview, uses a great deal of equipment and gear, including the SWAT team. With an overall Police Department budget of some \$15 million, Capt. Hensley notes that he and Capt. Gutman had to sign many equipment

purchase forms with large dollar amounts attached. As he described it, the budget planning meetings usually begin in the fall, and the department has to propose any capital improvement projects (those costing at least \$7,500), and anything costing \$1,000 or more has to be listed in the budget. Typically, Administrative Bureau Chief Courtney Lovell works with Finance staff to help create that budget. In 2018, Capt. Hensley said that the captains were part of those budget meetings, but he claimed that in the fall of 2019 they were excluded and not told about the process.

The Chief remembered this differently, saying that he thought that the captains were recalling different meetings. The captains are involved in capital improvement budget meetings (for the larger-cost items), but they have not been included in the line-item meetings. The captains were involved in the overall Township budget planning meeting with the Administrator, held in the Fire Department, and the Chief was firm that there was never a decision to exclude them. He did say that he decided to bring Assistant Chief Rebholz into the process for continuity,²⁸ but that the captains were not included in the line-item meeting and had not been so as a regular matter in the past.

f. Collective Bargaining Negotiations.

In his written complaint and also in his interview, Capt. Gutman complained about not knowing that collective bargaining negotiations were starting and learning this from the union president, and that he was not notified when negotiations were cancelled on October 15, 2019. The Chief was not notified about the cancellation until 9:30 p.m. the prior evening, and failed to notify Capt. Gutman, who came in early to attend the negotiations session. It was an oversight, and regrettable, but the captains participated as part of the management negotiating team, and this is not evidence of retaliation.

g. Other Changes in Policies or Procedures.

Capt. Hensley and Capt. Gutman both complained about other changes in how things have been done at the Police Department that were significantly less weighty than those discussed above. I do not address every example here; frankly, some involved minutia. Capt. Gutman complained that the Chief and Ms. Lovell decided to get new polo shirts for civilian employees, but neither he nor Capt. Gutman were part of the discussion. Choosing new shirts is not significant and certainly not evidence of retaliation. Capt. Gutman also complained about how procedures had changed on how to write written reprimands and what terms to use in personnel orders, whether officers will be allowed to flex their work hours to avoid paying overtime, and other procedural and policy issues. But with due respect, Capt. Gutman does not run the Police Department, and this seems to be little more than cobbling together policy changes with which he disagrees and trying to bootstrap it all into a retaliation claim.

²⁸ Continuity in leadership is important in any organization but particularly so in the West Chester Police Department. Both Chief Herzog and Assistant Chief Rebholz are re-employed retirants, already drawing a pension from the Public Employees Retirement System of Ohio (OPERS). Either could leave at any time while keeping that full pension, and part of the Chief's goals in recent years has been planning for leadership succession, though it is important to note that the West Chester Township Board of Trustees is free to hire leaders from outside the department as well. Even in that event, however, a new chief would need experienced managers knowledgeable about the Township's budget and business practices.

Capt. Hensley also complained that the Chief recently made changes on how incident and injury reports were routed to him, which the Captain characterized as bypassing chain of command, because they now come directly to Chief instead of through the captains. Capt. Hensley recognized that this was the Chief's decision to make, but he said that he announced the change in a supervisor meeting, when he and Capt. Gutman had not heard that the change was coming. Capt. Hensley also complained that, while the command staff used to meet ahead of the all-supervisor meeting held four or five times a year, that no longer happens and there is thus no collaboration before these meetings.

The Chief readily agreed that he had changed the policy on incident reports as a result of his frustration that use of force reports did not make it to his desk until as much as a week after the incident. Chain-of-command is important in any paramilitary organization such as a police department, but that is a guiding principle, not a rigid ladder. In this case, the report would go to lieutenant who might "kick it back," and then to the captain, who might do the same—and in the meantime, the Police Chief is unaware that one of his police officers has used force in a citizen encounter, which obviously can be a critical incident. It has never been more vital for the top leadership of police agencies to be aware of and actively scrutinize incidents involving the use of force. In the case of employee injuries, Ohio workers' compensation law and procedures require almost immediate notification to the Bureau of Workers' Compensation when there is any employee injury generating medical or lost-time claims, and the multiple steps under the prior procedure caused delays and problems with the BWC as well as for the injured employees, whose claims could be delayed or compromised. The Chief wanted a much quicker reporting system, and he told Lt. Paul Haering to develop the same report system for both, streamlined and more organized with reports coming directly to the Chief so that he knew promptly of any such critical incident. It is true that the captains did not know of the change ahead of that meeting, and neither did Lt. Col. Rebholz. As the Chief told me, the "straw that broke the camel's back" had taken place the day before, so he moved quickly at the supervisors' meeting, where he explained the reason for the change. The Chief said that he understood that it was ideal to review such changes with the command staff before announcing them to subordinate officers and that he would try to do so in the future. It is hardly evidence of retaliation, though, that he did not do so on this occasion, particularly since the Assistant Chief was in the same boat—in the dark—along with the two captains when the change was announced at the supervisors' meeting. This does not rise to anything close to illegal retaliation, either alone or as part of an alleged "pattern."

I note that this particular issue may be a microcosm of the core issue: that these captains run every change that the Chief makes with which they don't agree through the "worst-case lens," shaped by an *idée fixe* that Chief Herzog is "retaliating" and "out to get them." The Police Chief sets policy for the department, and he can make changes that they neither like nor even know about ahead of time. That is true for however long the Board of Trustees entrusts Joel Herzog with running the department. If the captains, the Assistant Chief, or anyone else disagrees, he or she can certainly voice that view, even vigorously so—but at the end of the day, the Police Chief makes the call, and as captains, they need to support and implement that change without "complaining down" the chain

of command in the organization. If they cannot support the Chief or live with his way of managing the department, they of course have the choice to resign, as Capt. Hensley just did. But the Trustees are unlikely to fire the Police Chief to find someone with whom the captains will get along. Chief Herzog told me that he feels as if he has a target on his back, where the captains store up complaints about every decision, funneling them to their lawyer to build their retaliation case. From what I have seen, he has a point. That can never be an excuse for retaliation, but with the captains' jobs and pay intact up to the point of Capt. Hensley's retirement,²⁹ there simply has not been any.

h. Claims of End-Runs or Loss of Supervisory Authority.

A major theme with both captains was that Chief Herzog and, to a lesser degree, Assistant Chief Rebholz routinely go around or beneath the captains to give a lieutenant, sergeant, detective, or patrol officer a task or a project to do. Often, the captains would find out about the assignment through an e-mail or a comment from a subordinate who assumed that the captain knew about it, leaving the captain feeling left out and perhaps embarrassed. The captains made the fairly convincing point that when this happens, they find themselves responsible for overseeing their subordinates' performance of tasks or projects that they know nothing about, and they cannot effectively prioritize their subordinates' work if they do not know what else they are working on. The captains argued that this not only creates problems for them but also dysfunction for the people below them. As an example, Capt. Hensley cited a recent incident when Lt. Beiser (the community affairs lieutenant) had asked him about something the Chief had asked him to do, about which Capt. Hensley knew nothing. He quotes Lt. Beiser as saying to him, "Don't you guys talk up there?", and Capt. Hensley maintains that this creates the appearance of dysfunction and also undermines his authority; in his words, this "cuts my legs out from under me."

The Chief acknowledges that there is dysfunction among the command staff, and in his words, "communication is shot." The Chief stresses that "it's both ways—they have secluded from me and vice versa." But the Chief feels that the claim that they are frequently bypassed reflects "hypersensitivity on their part." As he told me, "If I see something simple and see the lieutenant, I tell him. I send e-mails and copy the captain." The Chief is concerned about the appearance that the captains will not allow their lieutenants to come to him with a question on something he has assigned them; in his account, the captains tend to insist that lieutenants go through them. The Chief describes himself as highly accessible to his subordinates, and this perception is widely shared in the department: most employees seem to feel that they can approach Chief Herzog directly, and that is positive in my view. The Chief said that, in contrast, the captains seem "to take two days to 'get through to me'—when my office is just across the hall." The Chief insists that "I've never assigned a major project without their knowledge." Assistant Chief Rebholz reported much the same concern, that lieutenants have reported being told "you have to go through me [the captain]."

²⁹ I stress that at the time of Capt. Hensley's resignation and announced retirement, no charges had been brought against him, my report had not been finished or submitted, and neither had Lt. Haering filed his internal affairs investigation report. It is true that Capt. Hensley knew that he faced possible charges of dishonesty, but that was based on what he actually did and said, not some manufactured issue dreamt up by a police chief bent on retaliating against him. Mr. Hensley chose to retire before any action was taken when (1) he could have waited to see if the Trustees decided to actually file any disciplinary charges against him, and (2) he could have then contested any charges through the statutory hearing and appeal process. He chose to retire instead, for reasons of his own, and he certainly suffered no involuntary change in his employment status, rank, or pay prior to his resignation.

Some seem fearful of retribution, particularly from Capt. Gutman, who has a reputation in some quarters for being highly controlling. Chief Herzog says that he does not intentionally avoid the captains because of his anger and hurt, but the captains have withdrawn and will not come out of their offices when he is in his office and open to talk. Again, the lack of communication is endemic and multi-directional.

I give considerable credence, however, to the captains' basic point that they cannot effectively supervise if they do not know what assignments have been given to their subordinates or what they are doing. While the captains do not need to be briefed on every incidental request or directive, each of them needs to know what his people are doing so that he can oversee their work and take that work into account when divvying up other duties.

This requires balance, however. As the captains say they understand, the Chief and Assistant Chief do *not* have to go through the captains every time they see an officer, sergeant, or lieutenant in a hallway or outside the office and tell that person to do something for them. It would work far better, however, if the Chief and the Assistant Chief then followed up with a quick e-mail or comment to the captain afterwards if the assignment is in any way substantial. Doing so will preserve the essential flexibility and authority of the Chief and Assistant Chief to run the department without constantly checking off bureaucratic boxes, while also giving the captains the tools they need to manage their people.

In the case of Capt. Gutman in particular, however, there is still more irony in his complaint of being "micromanaged." Both the Chief and the Assistant Chief, interviewed separately, report that lieutenants under Capt. Gutman have reported feeling micromanaged and "smothered" by Capt. Gutman. If he does have an overly heavy hand at the till, this may require monitoring and, if necessary, corrective action by the Chief. Capt. Gutman also needs to find the same balance between exercising his authority as a supervisor and preserving his lieutenants' operational flexibility so that the structure does not become ossified and inflexible.

In sum, what the captains see as nefarious retaliation more likely represents the consequence of the Chief and Assistant Chief losing faith, confidence, and trust in their two captains, and vice versa as well. The Chief, Assistant Chief, and Ms. Lovell see these captains as bent on endless, low-grade warfare against Chief Herzog in particular, gathering and storing up claims of retaliation as missiles to lob against him, and they have lost considerable faith in the good judgment or even the decent motives of their two captains. The captains, on the other hand, seem to see their two commanders as bent on punishing them for raising concerns, and every change that might affect them is seen as another slight and another attack on their authority. Capt. Hensley was particularly convinced that Chief Herzog was "out to destroy" his career, at least until his own decision to retire—for which he still blamed the Chief. The core—and terribly dysfunctional—dynamic is that both sides seem to run everything the other side says and does through a filter of the worst possible interpretation or motive.

When you expect the worst of the people you work with, you will usually find it. Unless this dynamic is fundamentally and permanently changed, the command staff of the West Chester Police Department cannot function and the department's work will be compromised, an obviously untenable situation.

- C. Has Chief Herzog made discriminatory comments of a sexual, racial/ethnic, religious, or other, inappropriate nature at work or while with subordinate employees, and if he has made inappropriate comments, what response is warranted? As part of this issue, did Chief Herzog dress for Halloween in October 2015 in blackface and Afro-style wig, wearing a shirt mocking the Black Lives Matter movement in the wake of several controversial police killings of African American men?**

In both their written complaints and in their interviews with me, both captains alleged that Chief Joel Herzog has made offensive remarks of a sexual, racial, ethnic, or religious nature or engaged in discriminatory or offensive conduct, particularly the explosive allegation that Chief Herzog and his son dressed in blackface for Halloween in 2015. I conclude that the blackface allegation was fabricated, and I will cover that at the end of this section. The other allegations were problematic but not nearly as serious.

In my interviews, Chief Herzog is widely described as being too careless in his comments and his use of humor, often prefacing something that he is about to say with “I probably shouldn’t say this, but. . . .” He acknowledged this, and as I told him, that very phrase is a good cue to stop talking if the comment that is going to follow has anything close to discriminatory or inappropriate content. As is true with too many managers, particularly in heavily male occupations such as police and fire, the Chief’s boundaries were to some degree in the wrong place. The standard is not: “Is there a woman or member of a minority group around who might take offense” as opposed to, “It’s OK, because I’m joking with the guys.” The boundary is: “I am at work or with people who are subordinate to me, and I am the police chief, so I am never free to ‘go there.’ In fact, it’s my responsibility to ensure that no one else does either.” Those kinds of joking comments not only hurt people or make them feel “less than” or unwanted but can create potential liability for the department and real damage to the department’s public image. This is not about having a humor-free workplace or being ruthlessly “politically correct”; it is about treating people respectfully and avoiding even the appearance of bias based on race, sex, religion, national origin or ancestry, age, disability, sexual orientation, or gender identity. Care in this area is more sensitive than ever in law enforcement given the power that police officers wield, and the events that have rocked this country recently.

1. Comments About Women.

I find that the Chief has at times commented on the attractiveness of women in conversations with subordinates, including commenting on Ms. Bickley’s good looks with the captains and others. I did not find that he said anything explicit or grossly offensive—and nothing at all to her—but the reality is that he should not be talking at all about an employee’s looks or attractiveness with his employees. Justine Bickley is a fine and dedicated employee, and she earned her job through a good background and skill set plus effective interviewing. To talk about her being attractive feeds into the impression that she was chosen because she is good-looking, and that is demeaning to her. I know that the Chief highly values her work and respects her commitment to and diligence in the job, and that is all that should ever be commented on.

Chief Herzog has at times made other comments about women's appearance generally, including in joking banter, and he has at times been careless in doing so. None of the most offensive allegations were sustained (see below). But Chief Herzog needs to set the example, not "joke around with the guys," and given that my interview was itself something of a dressing down for Joel Herzog, I believe that he understands those boundaries, and he has committed to me and to the Board of Trustees to be far more careful in how he talks in the future. As I have told him I would do, I am recommending that his performance improvement plan specify that any inappropriate and potentially discriminatory remark in the future will result in his immediate discharge. It is worth noting that Capt. Hensley and Capt. Gutman agreed that once they told Chief Herzog in 2019 that they did not welcome comments of this kind, the comments largely stopped. In short, their request to him worked. Now, he needs to stop such comments altogether with anyone he works with at any time or in any setting.

For the first time in my interviews, Capt. Hensley and Capt. Gutman made two more serious allegations about Chief Herzog's comments about women. First, Capt. Hensley said that following Justine Bickley's final interview, as she was walking away, the Chief, Lt. Col. Rebholz, and Capt. Gutman were talking in the hallway between their offices. Capt. Hensley said the Chief commented on "that tight little ass she has," while gesturing with his hands. I was startled by this, so much so that I called the Law Director that evening to brief him. I conclude that Chief Herzog never said this, and that Capt. Hensley fabricated the comment. Not only do Chief Herzog and Assistant Chief Rebholz strongly deny this, but even Capt. Gutman, who largely supports Capt. Hensley in a lock-step way, did not ever hear Col. Herzog use words like that, despite the fact that Capt. Hensley places him in the discussion. In short, I conclude that this never happened.

Second, Capt. Gutman quotes Chief Herzog as openly commenting on the "nice ass" and "tits" on a waitress in First Watch while the four command officers were having lunch in uniform. The Chief denies ever using language like that in such a public setting. Lt. Col. Rebholz said that while he could imagine Chief Herzog saying words like that somewhere, he was sure that he never did so when they were in a public place in uniform. Capt. Hensley, who would have been at that lunch, never mentioned any sexual comments that explicit, and he certainly was ready to document anything negative that he remembered about Chief Herzog. I conclude that the Chief did make comments about the attractiveness of women, probably including when the four of them were out to lunch, but I do not believe that he was as explicit as Capt. Gutman describes. Nevertheless, commenting on women's appearance while with subordinates is foolish behavior reminiscent of a boys' locker room, and it needs to stop. The fact that each captain has made accusations of vulgar comments that are not backed up by the other captain is, however, consistent with a pattern: the captains take a kernel of truth and embellish it with sordid details without supporting evidence. Other examples of this will follow.

2. Allegations of Discriminatory Comments about Race, Ethnicity, or Religion.

Capt. Gutman claimed that Chief Herzog has referred to his allergist, Dr. [REDACTED], as "the terrorist" in an offensive, if joking, way. Dr. [REDACTED] and his wife [REDACTED] are both prominent members of the Islamic Center of Greater Cincinnati, the second largest mosque in Ohio, located in West Chester Township. Chief Herzog has a long and good relationship with [REDACTED] as a patient but even more so with [REDACTED] and [REDACTED] as community leaders and friends.

The Chief says that Capt. Gutman actually used the term first when Chief Herzog told the captain that he had an appointment with Dr. [REDACTED], and Capt. Gutman replied, "Really??", with a raised eyebrow as if in suspicion. Capt. Gutman served at the time on the regional terrorism task force, and the Chief found himself wondering what he was trying to say—"Does he know something I don't know?" The implication irritated Chief Herzog, so when he would go to see Dr. [REDACTED], he would sometimes look at Capt. Gutman and sarcastically say, "I'm going to see the 'terrorist,'" based on Capt. Gutman's earlier comment. The Chief grew very emotional and distraught when discussing this accusation, because he has enjoyed an excellent relationship with both Dr. [REDACTED] and [REDACTED], which is important to him personally and as Police Chief in this community. I conclude that Chief Herzog did not intentionally make any offensive or biased comments about Dr. [REDACTED] and I find it credible when he said that he would never do so. He was so concerned about damage to that relationship that he met with Dr. [REDACTED] and [REDACTED] after my interview with him to assure them that he would never use such a slur in that way.

Capt. Hensley reported that in meetings, Chief Herzog had shared a story about how officers in the Cincinnati Police Department would sometimes refer to African Americans as "#2," referring to the box for race on the CPD forms (#1 = White, #2 = Black, #3 = Asian). I do not believe that he ever used this phrase as a joke or slur. I nevertheless conclude that Chief Herzog needs to be *very* careful about using insider police lingo that could be seen as offensive, particularly to those who do not understand that specific context. In any event, however, people should only be called what they wish to be called, and in this case, that means "Black" or "African American." Any "lingo" of that kind needs to be permanently retired. Another example is how Chief Herzog once jokingly referred to two officers named Michael as "white Michael" and "brown Michael"; Officer Michael Lopez is Latino. While the Chief recently apologized to Officer Lopez, who assured him that it was not a problem, there is a more fundamental lesson here for Chief Herzog: both "Michaels" have a last name, and that is the only way they should be distinguished from one another, not through a joking reference to their skin tones.

The Chief also acknowledged that he has at times used the slang term "dot" to clarify that he was referring to an Indian-American³⁰ as opposed to American Indians, the indigenous peoples of this continent. Whatever the context or however much he never intended it to offend, such slang is inappropriate and would likely be seen as unwelcome or insulting to Township residents of South Asian ancestry. Again, the simple test is to call people what they want to be called—and if you don't know, ask. I do not believe that this was a frequent practice, and after I sharply advised Chief Herzog never to say that again, he understood and readily agreed.

This is not an exhaustive list, and there were other things that Chief Herzog said that were unwise and potentially offensive. I found no evidence that Chief Herzog used intentionally racist language or discriminatory slurs, however—that would usually be grounds for discharge. If I had found such evidence, I would not have hesitated to recommend Chief Herzog's immediate termination. He was careless and has said foolish and thoughtless things on occasion: "I probably should say this, but. . ." But if Chief Herzog did not know before that language like this is always off-limits, for him and for the department he supervises, he does now. In the words of the great writer Maya

³⁰ The longer version is "Indian? Do you mean dot or feather?" The "dot" refers to the practice of some Hindus, particularly women, to place a mark on the forehead as part of religious devotions. The proper term is "bindi."

Angelou, “When you know better, do better.” Joel Herzog should have but one chance to clean up his verbal act and show far more care in how he speaks to and about people. The diversity of West Chester Township and our nation and world is to be respected and talked about with respect. He says that he understands this and will live by that standard, and I believe him. If he fails that test in the future, however, he deserves to lose his job.

3. The Blackface Allegation.

This was the most serious allegation raised against Chief Herzog, one that if true would have almost certainly ended his career.

In February 2019, a woman who called herself “Michelle” called Township Administrator Larry Burks and said that she had a picture of Chief Herzog dressed in blackface and was going to take it to the media. The caller gave no other identifying information, never produced the picture, and apparently never followed up with anyone in the media, as any such photograph would clearly have caused an explosive reaction, and understandably so. Mr. Burks called Chief Herzog in to ask him about this, and Chief Herzog adamantly denied ever wearing blackface. That afternoon toward the end of the workday, the Chief mentioned this call to Capt. Hensley. In his complaint letter, Capt. Hensley said that it was not until his drive home that he remembered: “Wait, I saw that picture.” He met with Chief Herzog the next day to tell him, “Chief, I have to tell you that I saw that picture,” and he now remembered several more details: It was around Halloween 2015, and the picture showed the Chief and his son, a police officer with another jurisdiction, both wearing blackface make-up and caricature Afro-style wigs, with yellow tee-shirts with the slogan “Hands Up, Don’t Shoot!”, an obvious reference to the Black Lives Matter movement and the protests that had erupted following recent deaths of several African American men at the hands of police. In our interview, Capt. Hensley explained that his wife saw the picture posted on [REDACTED] Facebook page and showed it to him, and he said to her, “Don’t touch that and don’t comment.” He also stated in his complaint letter that his sister-in-law ([REDACTED] sister) and “a former employee” had also seen the picture. He did not have the picture—he thought it was taken off Facebook within hours—and he never reported it to anyone until the Chief mentioned the anonymous phone call. Thereafter, Capt. Hensley went to Mr. Burks to tell him that he had seen the picture, accompanied by Capt. Gutman,³¹ and he mentioned many of his other complaints about Chief Herzog as well.

I conclude that the accusation that Joel Herzog dressed in blackface is untrue and likely an outright fabrication, for the following reasons:

- No one has ever produced this picture, including the caller “Michelle.” Why would she not follow through on her threat to disseminate the picture and expose the Chief? More than that, however, it beggars belief that someone could share on Facebook a picture of a police chief dressed in this racist manner in the fall of 2015—just a year after the shooting of Michael Brown in Ferguson and the death of Eric Garner in a police chokehold in New York—without the picture being seen, widely screenshot or shared, and generating an enormous backlash and controversy. The country was at that time still in huge turmoil over this issue, as it is even more so now. There is simply no feasible way that a photo like that

³¹ Capt. Gutman never saw the picture and knew nothing about it, so it is not clear why he came with Capt. Hensley or what he added to the discussion, except for the fact that the two captains were now apparently working as a team.

could “fly below the radar,” especially on Facebook! If that had happened, the picture would have been seen and widely shared in a matter of minutes, with protesters crowding Township Hall demanding the Chief’s resignation at the next Trustees meeting.

- It makes no sense that Capt. Hensley would not remember seeing this picture until his drive home. A photograph like this would be so jaw-droppingly shocking as to be seared into memory—yet he only remembered it later?
- No one other than Capt. Hensley, his wife, and his sister-in-law claimed to have seen this picture. He was reluctant to name the “former employee” who allegedly saw the picture, but I asked and insisted on an answer, and after a notable hesitation, he named former Lt. Bob Reese, who retired in 2010. Capt. Hensley said that Mr. Reese told him that he also “saw something like that.” I interviewed Mr. Reese, who was quite open and certainly seems credible. Mr. Reese has never seen any such picture. He has never even had a Facebook account, let alone been connected to [REDACTED] as a Facebook friend. He never saw any picture of Joel Herzog in any Halloween costume at any time, let alone this one. When I specifically asked if he had seen a picture of Chief Herzog dressed as Capt. Hensley described, he snorted with a derisive laugh and forcefully said, “No! It is not something he would do, and I’ve never seen it.” He did recall Jamie Hensley talking to him over lunch several months ago, and Capt. Hensley said something about seeing such a picture, but emphatically, Mr. Reese said that he never saw such a picture and certainly never told Capt. Hensley that he had seen it.

I conclude that (1) Capt. Hensley likely fabricated this allegation to damage Chief Herzog, and (2) Capt. Hensley flatly lied to me when he told me that former Lt. Bob Reese had told him that Mr. Reese had seen that picture.

Chief Herzog did share with me a picture of a burglar costume that he and his wife actually wore in October 2015. He is not wearing blackface but a mask—but then again, when the Chief first told Hensley about the anonymous call, the Chief says that Capt. Hensley did not even know what blackface was. Chief Herzog’s son is not in the picture—he was hours away at the time—and no one is wearing Afro wigs let alone a racist “Hands Up, Don’t Shoot!” tee-shirt. Here is that picture:



In other cases, Capt. Hensley embellished stories to put the Chief in a worse light than warranted by the actual facts. In this case, however, he appears to have fabricated a defamatory and explosive lie, and to add to the offense, he risked wrecking the reputation and even future employability of the Chief's son, a young police officer with a promising career ahead of him. On top of that, Capt. Hensley tried (unsuccessfully) to involve a retired colleague in the lie. For a police officer to lie is always an extremely serious offense, even career-ending, but for Jamie Hensley to fabricate a racist allegation of this kind is insidious and inexcusable misconduct.

Even if we did believe Capt. Hensley's account that he saw this racist costume in 2015, we would have to consider why he said nothing to anyone within the Township at the time—not to the then-Township Administrator Judy Boyko nor to any of the Trustees. In our interview, Capt. Hensley rather convincingly begged off that he was a mere sergeant then—but as the Chief pointed out, he was a sergeant *in the Integrity and Development section*, the very section that is specifically charged with maintaining and upholding professional standards. Jamie Hensley had a *duty* to report racist behavior of this kind—and yet he said nothing to anyone? Of course, in 2015, he was not yet at war with his Police Chief, looking for anything that he could find to throw at him.

But this is the path that Jamie Hensley sadly and inexplicably choose. In his 22-page complaint, Capt. Hensley referred to his “knowledge of further improper actions by [Chief Herzog] that will be exposed” and “corrupt conduct,” so of course, in our interview, I asked him to explain to what he was referring, in as much detail as he had. Our interview lasted two days; there was plenty of time to cover every example. Yet Capt. Hensley had nothing to offer in the interviews beyond what was in his complaint letter. To use a term like “corrupt,” with its devastating connotation of illegality, while having nothing to back that up that, represents irresponsible if not defamatory mudslinging, an apparent campaign to splatter Chief Herzog with as much as possible, hoping that some of the stain will stick. What was Capt. Hensley's goal? To drive Joel Herzog out of his job, and perhaps Brian Rebholz with him, leaving a vacancy that a captain might fill? To intimidate the Chief into backing off the internal investigation into whether he lied to Chief Herzog and Lt. Col. Rebholz, knowing that a finding of dishonesty could end his career? I do not know, and unlike Jamie Hensley, I will not assume answers that I do not have. What I can say is that when it comes to allegations like the blackface incident or claiming “further improper actions that will be exposed,” Capt. Hensley lied—in his written complaint to Mr. Burks and to me in our interview. He did so after I gave him the same warning that I gave every witness, including Chief Herzog and Assistant Chief Rebholz:

This directive is important—you are required to answer every question I ask you fully, completely, and honestly—even if the truthful answer puts you, a fellow employee or friend, or a supervisor in a bad light, even if the answer might cost you or someone else his or her job. You have no right not to answer my questions. In giving that directive, I speak with the authority of the Board of Trustees, as I am acting as their agent. If I conclude that you or any other witness has lied to me or withheld information, I will without hesitation be recommending that person's discharge from employment irrespective of whatever else I conclude about the underlying issues I am here to investigate. No employer, particularly any police agency, can tolerate any dishonesty in an internal investigation.

There were clear grounds to bring several charges of dishonesty against Capt. Hensley, both for statements in the meetings of January 28 and 29 and in my interview. His abrupt resignation before I issued my written report mooted any need for disciplinary proceedings on that question, but given some of the reckless and simply false accusations that he hurled against Chief Herzog, it is important to state, for the record, my investigation's conclusion that Capt. Hensley lied.

D. Should the Township take further actions to document expectations in the wake of Chief Herzog's involvement in the aftermath of the arrest of his friend Jeff Couch, and were Capt. Gutman's allegations about the content of text messages accurate?

On March 2, 2019, the West Chester police responded to reports of screaming inside a Wetherington residence, and at that scene, officers arrested Jeffrey Couch, owner of RV Nation and a prominent local businessman and political donor in West Chester Township. Mr. Couch was charged and later convicted of felony aggravated assault on his wife, [REDACTED]. Late on that Friday night, Chief Herzog received a text message from Sgt. Michael Bruce, who was on his way to the residence, and he reported that a woman was being transported to the hospital. Later, Sgt. Bruce told him that it appeared that Mr. Couch had assaulted his wife, and he asked the Chief if he had further instructions. The Chief replied, "Do your job." The officers arrested Mr. Couch and transported him to the Butler County Jail, and he was thereafter charged with multiple counts of felony assault.

Chief Herzog had long known Mr. Couch as a prominent businessperson and major political donor, both in West Chester and elsewhere. Moreover, the Chief and his wife were longtime friends of Jeff and [REDACTED] Couch, and their children were also friends. Chief Herzog was seriously concerned for Mr. Couch's emotional state, and he decided to try to visit him in jail. Mr. Couch was represented by Jonathan N. Fox of the law firm Lyons & Lyons. Chief Herzog first contacted Robert H. Lyons, Mr. Fox's law partner, and he asked him to check with Mr. Fox to see if the lawyer had any problem with the Chief visiting his client, given that he was the police chief for the arresting department. Mr. Lyons called back to tell him that Mr. Fox had no objection to such a visit given their long friendship.

Chief Herzog next contacted Chief Deputy Anthony E. Dwyer of the Butler County Sheriff's Office to inquire if he could visit Mr. Couch in the Butler County Jail. Chief Deputy Dwyer said that he would need to check with Sheriff Richard K. Jones, and when he got back with Chief Herzog, he told him that Sheriff Jones would not approve the visit. Sheriff Jones later issued a statement to the media that he had "refused" the Chief's "inappropriate request" to visit Mr. Couch in jail as it was a "conflict of interest." This triggered quite a storm of media coverage, both of the arrest itself and the Chief's attempt to visit Mr. Couch in jail. In the aftermath, Township Administrator Larry Burks sent the Chief a memorandum telling him that he understood the Chief's motivation but that his actions had put the Township in a bad light, and he needed to be avoid that in the future.

I, too, understand and accept that Chief Herzog was acting out of good motives as a friend rather than trying to interfere with a prosecution, but I view his actions as a more severe error of judgment that warrants a stronger warning. This incident really has nothing to do with either captain's claims of retaliation, but since both cited the incident in their lists of Chief Herzog's allegedly wrongful actions, let us look again at what Chief Herzog did, step by step.

Chief Herzog's first move in telling the sergeant on the scene to "do your job" was the perfect response. He should have stopped there and had no further involvement with Mr. Couch until the case was resolved.

I accept that the Chief contacted Mr. Lyons as the law partner of Mr. Couch's attorney to see if Mr. Fox would have any problem with the Chief's plans to visit him in jail. But Mr. Lyons is also the Butler County Area I Court judge,³² however, and while Mr. Couch would make his initial appearance in the Area III Court, having *any* contact with *any* Area Court judge creates a potential appearance of impropriety to the public—a perception that the Police Chief might be attempting to do favors for a friend and a major political donor. This was a significant error in judgment.

This misstep was then accentuated by the Chief's actual attempt to visit Mr. Couch in the Butler County Jail. Yes, Jeff Couch is his longtime friend. But Joel Herzog is the Police Chief for the arresting department, and in that situation, the sensitivities inherent in his role as police chief must take precedence. When it comes to anyone whom his department is investigating or has arrested, Joel Herzog can never put down the mantle of being the police chief; in that situation, he can never be "just a friend." In my interview, I was at first not confident that the Chief fully understood that absolute boundary, but by the end of a very tough discussion on this point, he understood.

As I said above, none of this has anything to do with Jamie Hensley or Joe Gutman. Following the arrest and telephone conversations between [REDACTED] and [REDACTED]—also longtime friends,³³ [REDACTED] reached out to Chief Herzog by text message to express her distress about the media encampment in front of their home in a private, gated development. Local news media sought copies of the text messages through a public records request to the West Chester Police Department.³⁴ Jeanni Quinn handles requests for public records and apparently felt considerable stress given the intense media focus (and her boss's role). She mentioned to Capt. Gutman her concern that she did not know if the Chief had turned over all of the text messages, which were then being reviewed by attorney Thomas B. Allen³⁵ of Frost Brown Todd to determine which of them fit the definition of public record and must therefore be released. Capt. Gutman told me that he "just happened to see" the text messages lying on Ms. Quinn's desk, and he told Capt. Hensley that in one of them, Chief Herzog had said to [REDACTED], "How dare they fuck with people of

³² The Area I Court is based in Oxford and covers the northwest portion of Butler County and thus has no jurisdiction over West Chester Township. The Area III Court based in West Chester is the court that would arraign Mr. Couch.

³³ In fact, Jeff and [REDACTED] Couch were due to have dinner with Joel and [REDACTED] on the Saturday night following the assault. The first that [REDACTED] even knew of the arrest was in a telephone call from [REDACTED] Couch on Saturday morning—obviously cancelling the dinner. [REDACTED] was shocked and distraught at the news, and the Chief showed commendable restraint in not telling his wife the news of their friend's arrest the night before.

³⁴ Not every document in the possession of a public agency is a "public record"; the document must "serve[] to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office." Ohio Rev. Code § 149.011(G).

³⁵ Mr. Allen is a law partner of the Township's Law Director, Donald L. Crain, and he is also one of the leading experts on Ohio public records law. He lectures frequently on the subject in continuing legal education programs.

privilege!" Both Capt. Hensley and Capt. Gutman quoted this in their complaint letters, and Capt. Gutman repeated this quote in my interview with him.

I have reviewed all the text messages, both the ones released as public records and those determined not to meet that legal definition. This exchange was the only statement that was posed any possible problem, but Joel Herzog did *not* say what Capt. Gutman quoted. In response to [REDACTED] [REDACTED] complaint about all the television camera crews and reporters gathered in front of their home, Chief Herzog told her that his department could not prevent that, and the Chief then mentioned the "media messing with people of status."

In our interviews, neither Capt. Hensley nor Capt. Gutman would acknowledge the significant difference in the language. Of course, Capt. Hensley had no direct knowledge and was just quoting Capt. Gutman, who made sure that Jamie Hensley knew what he had "just happened to see." Both captains defended the stark difference in words and tone, saying basically that "this is just a more polite way of saying the same thing." Capt. Gutman even said, "I am certainly not trying to embellish this!", but of course, that is exactly what he did. This is yet another example of Capt. Gutman and Capt. Hensley taking a kernel of truth and then exaggerating or embellishing it into something far uglier.

When I interviewed Chief Herzog and discussed this issue with him at length, I asked him how he would feel if a captain, lieutenant, sergeant, or officer under his supervision did what he did following a friend's arrest for violent assault by the West Chester Police Department. The Chief said that he would have no problem with this, so long as the officer asked him first. I find it unlikely, however, that Chief Herzog would (or should) ever agree to that or think that was acceptable. Chief Herzog believes that his motives were benign, and in that light, it may be hard for him to see the perception of impropriety, but of course, that is why objective, ethical standards exist. I believe that Chief Herzog would have seen that perception of impropriety if one of his officers did the same thing—or he certainly should see that the public might view that very differently. The other problem with his answer, of course, is that the Chief did *not* seek prior permission from his own superior, the Township Administrator.

Chief Herzog did not in any way impede either the arrest or the prosecution; Mr. Couch's conviction for felony aggravated assault shows that. But the Chief's benign motives are not the issue. His ethical obligation as the Police Chief is to avoid even the appearance of impropriety, and he failed that standard here. While the Township Administrator did address this with Chief Herzog, I think the severity of that warning needs to be amplified by expressly telling Chief Herzog that any future violations of professional or ethical boundaries will result in his immediate discharge. The Chief made a serious mistake in judgment, which he belatedly recognizes.

In this context, however, the Jeff Couch incident has nothing to do with Capt. Gutman or Capt. Hensley, other than giving them another accusation to lob at Chief Herzog, one that offered nothing that the Township leadership did not already know.

E. Did Chief Herzog manipulate the content of personnel files of employees under consideration for other positions in a way that represents improper handling of public records?

Both Capt. Hensley and Capt. Gutman alleged the Chief Herzog briefly removed adverse information from the personnel files of Officer Steve Seitzman and Jeanni Quinn when each of them was seeking employment elsewhere—for Officer Seitzman, a job with the Centerville Police Department and for Ms. Quinn, a position in Township administration. The Chief did temporarily remove or withhold items from Steve Seitzman's and Jeanni Quinn's personnel files around the time each was seeking another job. Here is what happened and why.

Let's start with Ms. Quinn: On March 20, 2018, Assistant Chief Rebholz issued police service log entry (PSL) admonishing Ms. Quinn for her handling of an issue. On April 2, Chief Herzog received a response from Ms. Quinn to the PSL. Ms. Quinn was indeed pursuing a job with Township Administration, but the Township's central administration office never asked to review her personnel file. The memorandum announcing that the position she was seeking had been filled (not by Ms. Quinn) was issued on April 6, and at that point, no one from Township administration had ever spoken with the Chief or anyone else in the Police Department about Ms. Quinn's work record, which may mean that she had already been ruled out as a candidate. When Ms. Quinn submitted her response to the PSL, the Chief said that he wanted time to evaluate and review her response. On June 27, long after the position had been filled, Chief Herzog wrote his decision that he was leaving the PSL in Ms. Quinn's file. He said that he waited this length of time because he wanted to see how she reacted and whether she changed her behavior, and at that point, he decided that the PSL needed to remain in her file. No public record was removed or destroyed.

With regard to Officer Steve Seitzman, as far as Chief Herzog recalls, nothing adverse had yet made it into his personnel file, let alone been "pulled," at the time of the public records request. Officer Seitzman had applied for a police officer position with the City of Centerville, and the Centerville Police Department provided a release to review Officer Seitzman's personnel file on April 24, 2019. Capt. Gutman had submitted an admonishment, a PSL, for Officer Seitzman's failure to respond to e-mail from Chief Herzog. But the Centerville request came in on that same day, and the PSL had not yet been placed in his file. A second PSL on a different issue was submitted by his three supervisors on the following day, April 25, the day after the Police Department received the request to view the file. Officer Seitzman submitted his rebuttal to the second PSL on May 14, and Chief Herzog assigned Capt. Gutman to review his response to see if it presented any new issues to consider. The Chief did not receive Capt. Gutman's response until June 3. Officer Seitzman was worried about the write-ups in his file; he reached out to the union attorney Susan D. Jansen, who then contacted Township Law Director Donald Crain, asking if these PSLs had to be in his personnel file when Centerville officers came to review the file. Mr. Crain contacted the Chief, asking, "Do they have to be in the file?" The Chief replied, "No, because they are on my desk"—he had either held or pulled the second PSL after Officer Seitzman wrote his rebuttal, and the Chief wanted to wait until Capt. Gutman responded, as it might result in the Chief modifying or reversing the PSL. Even without an employee rebuttal, it takes time to process PSLs, and they do not typically make it into the personnel file for several days at least. In short, neither PSL was in Officer Seitzman's file until *after* the request from the City of Centerville had been received, and when Mr. Crain inquired, at least the second PSL was still on the Chief's desk awaiting assignment to Capt.

Gutman for review. The first PSL was placed in Officer Seitzman's file at some point after it was submitted (but after Centerville's request to review the personnel file had been received). The second PSL was not placed in Officer Seitzman's file after the Chief received Capt. Gutman's response, but by then Officer Seitzman had already been selected for the Centerville job, though he had not yet started his new role.

Chief Herzog acknowledged that he had no problem with either employee leaving for employment elsewhere, but convincingly explained that neither case involved any manipulation of personnel files or other public records to facilitate that. Of course, department heads and human resources administrators place and remove items from personnel files on a frequent basis—either because of provisions in a union contract, a decision that an item is no longer relevant, or because a request for review is found to have merit.³⁶ So long as a public record is not destroyed (other than in accordance with an approved retention schedule), this in no way violates Ohio law. In this case, Chief Herzog had legitimate business reasons for reviewing these documents because both employees had challenged the PSLs in question, and he was at the time reviewing their complaints to determine whether the PSLs would stay. In Jeanni Quinn's case, the Township Administration never even requested to review her personnel file, and for Steve Seitzman, the PSLs in question came in after Centerville had submitted their request to review the file. The Chief's actions had no impact on the decision to hire or not hire either employee.

Accordingly, I find that Capt. Hensley's and Capt. Gutman's accusations on this issue are not founded because there is no evidence that Chief Herzog either destroyed any public record or manipulated the content of personnel files improperly.

F. What are the appropriate next steps for the Township to take in response to these findings to respond to misconduct or change a dysfunctional leadership dynamic?

When I first began writing this report, one key issue facing West Chester Township was whether Capt. Jamie Hensley should face disciplinary charges for lying, both in his January 28 meeting with Chief Herzog and Assistant Chief Rebholz and in his interview with me on May 21, 2020. I had already concluded that he lied to me in our interview, and Lt. Paul Haering and his unit had largely concluded their own investigation into Capt. Hensley's statements on January 28, although that report had not been written or submitted to the Police Chief.³⁷ Before either report was finalized, Capt. Hensley suddenly decided to resign and retire under the Ohio Public Employees Retirement System. That decision obviates any need to take disciplinary action regarding the honesty issue.

Capt. Joe Gutman, who faces no disciplinary charges or issues at this juncture, nevertheless faces a critical choice. If he wishes to remain as captain, he needs to accept two realities in his workplace:

³⁶ In another piece of unintended irony, the captains complain about Chief Herzog removing items from a personnel file to make it look more positive, but that is exactly what they are asking for themselves. Both captains requested that negative comments on their 2019 performance evaluations be removed, and Capt. Hensley asked that the January 28 memorandum from Tonya Charles on performance expectations be removed from his file altogether. Under their reasoning, then, would granting their requests be "misconduct" on the Chief's part?

³⁷ This is based on what Lt. Haering told me; I have never seen any draft report.

(1) It is Joel Herzog, not he, in whom the Board of Trustees have entrusted the management of the Police Department. The Chief must comply with applicable laws, of course, but he is free to make management decisions with which Capt. Gutman may disagree, even strongly so. That is equally true with Assistant Chief Rebholz, subject to the Chief's authority. If the Trustees are dissatisfied with Chief Herzog's management of that trust, they are free to remove him. If Capt. Gutman cannot live with the Chief's management style or decisions, he is then free to resign or seek employment elsewhere. If he stays, he must accept the Chief's authority and support him in his role as Chief.

(2) It is the right of the Police Chief, with the approval of the Board of Trustees, to select his [REDACTED] The Police Chief and Administrative Bureau Chief supervisor her. Neither captain has any role in overseeing her nor any voice in her employment. Justine Bickley has done a fine job in that role and she will and should stay unless the Chief and Township management or Ms. Bickley chooses otherwise. The accusations of so-called "misconduct" that Capt. Gutman and Capt. Hensley raised about her are specious, baseless, and even sexist, and there is no objectively reasonable basis for Capt. Gutman to be "uncomfortable" around her. If he is uncomfortable in her presence because of outmoded views of how women and men should work together, and that prevents him from treating her like everyone else, then Capt. Gutman needs to leave. The non-negotiable fact is that there is simply no basis to limit Ms. Bickley's actions, hours, or anything else relating to her work. Capt. Gutman should therefore be required in a performance improvement plan to treat Ms. Bickley in a warm, collegial, polite, and kind manner—and in an *equal* and nondiscriminatory manner—at all times so that no objective outsider would be able to tell any difference from how he treats her as opposed to any other employee in the Chief's office. Capt. Gutman works for West Chester Township, and he has no right to dictate the terms of his workplace interaction with her or any other employees. His employer sets those standards, and any future failure to meet them is potentially discriminatory and should result in his termination from employment.

For Chief Herzog and for Assistant Chief Rebholz, there is no basis for any disciplinary action. As detailed in this report, Capt. Herzog needs show significantly more care to be professional and appropriate in his conversations with subordinates and in the presence of members of the public. He must particularly avoid any comment, including joking ones, based on a person's race, sex, religion, national origin or ancestry, age, disability, sexual orientation, or gender identity—that is the law and West Chester Township policy. This is true at all times, on-duty and off-duty, for Joel Herzog always wears the role of West Chester Police Chief, and his words and actions therefore reflect not only on himself but the Police Department and the Township as a whole. A performance improvement plan for Chief Herzog should clarify and specify this requirement, and that failure to meet those expectations will end his service as Police Chief.

More broadly speaking, for the remaining command staff members to function, for this dysfunctional and toxic workplace dynamic to heal, each of them must communicate far more effectively with each other on a constant and open basis. That means that Col. Herzog and Lt. Col. Rebholz cannot avoid Capt. Gutman to avoid the negativity. I also recommend that the performance improvement plans for Chief Herzog spell out that expectation, including holding regular command staff meetings as well as structured communication sessions involving Assistant Township Administrator Lisa Brown. They should also be required to submit regular, joint reports with Capt.

Gutman to Township Administrator Larry Burks on their progress in rebuilding the work relationship.

I finally recommend that Dr. Cohen resume his team-building efforts in the wake of this report, the resignation of Capt. Hensley, and the performance improvement plans that will be issued. I do not know if the Police Department command team can get past the deep damage and distrust, but there is no responsible choice but to work hard at doing so.

There may be other training programs aimed at improving communication and teambuilding that the Township can consider requiring the members of the command staff to attend. But unless this dysfunction and "guerrilla war" among the Police Department's command staff is stopped, and *all* involved commit to the hard work of making the individual changes necessary for that to happen, the situation is completely untenable. All involved need to understand that each person's continued employment depends on making the changes necessary to rebuild that an effective work team.

III. CONCLUSION.

I deeply appreciate your entrusting me with this difficult and important investigation. I stand ready to help you, the Township Administrator, Assistant Administrator, and Human Resources Manager, as well as the Police Chief, Assistant Chief, and any other Township officials in any way needed to further address or resolve these issues. Please let me know if you have any questions about this report and its conclusions or if you require anything further at any point.